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22 ARMS RACE NUTRITION, LLC; NEWPORT NEWS NUTRITION CORNER, LLC,
23 individually and dba THE NUTRITION CORNERS; ARLINGTON NUTRITION CORNER,
24 LLC, individually and dba THE NUTRITION CORNERS; CORE NUTRITIONALS LLC;
25 DYNAMIC NUTRACEUTICALS, L.L.C.; CRUSH IT HOLDINGS, LC; CRUSH IT
26 INTERNATIONAL, INC.

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

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

Plaintiff,

vs.

**ARMS RACE NUTRITION, LLC; NEWPORT
NEWS NUTRITION CORNER, LLC,
individually and dba THE NUTRITION
CORNERS; ARLINGTON NUTRITION
CORNER, LLC, individually and dba THE
NUTRITION CORNERS; CORE
NUTRITIONALS LLC; DYNAMIC
NUTRACEUTICALS, L.L.C.; CRUSH IT
HOLDINGS, LLC; CRUSH IT
INTERNATIONAL, INC.; and DOES 1-100**

Defendants.

CASE NO. 22CV009275

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 1, 2022
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On April 1, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and
7 dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The
8 Nutrition Corners, Core Nutritionals LLC, Crush It Holdings, LLC, and Crush It International,
9 Inc. (collectively “Arms Race Nutrition”), Dynamic Nutraceuticals, L.L.C. (“Dynamic
10 Nutraceuticals”) and Does 1-100. Subsequently, on April 13, 2022, a First Amended
11 Complaint was filed. On August 3, 2022, a Second Amended Complaint (the operative
12 Complaint, hereinafter referred to as the “SAC”) was filed. In this action, ERC alleges that a
13 number of products manufactured, distributed, or sold by Arms Race Nutrition and Dynamic
14 Nutraceuticals contain lead, a chemical listed under Proposition 65 as a carcinogen and/or a
15 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
16 warning. These products (referred to hereinafter individually as a “Covered Product” or
17 collectively as “Covered Products”) are: (1) Arms Race Nutrition Harness Pre-Workout Black
18 Cherry, (2) Arms Race Nutrition Harness Pre-Workout Pineapple Mango, (3) Arms Race
19 Nutrition Harness Pre-Workout Lemon Rush, (4) Arms Race Nutrition Daily Pump Stim-Free
20 Pre-Workout Big Sky, (5) Arms Race Nutrition Foundation Protein Blend S'Mores, (6) Arms
21 Race Nutrition Foundation Protein Blend Snickerdoodle, (7) Arms Race Nutrition Foundation
22 Protein Blend Apple Fritter, (8) Arms Race Nutrition Daily Pump Stim-Free Pre-Workout
23 Bombsicle, (9) Arms Race Nutrition Daily Pump Stim-Free Pre-Workout Pineapple Mango,
24 (10) Arms Race Nutrition Harness Pre-Workout Limeade, (11) Arms Race Nutrition Daily
25 Pump Stim-Free Pre-Workout Tart Candy Strings, (12) Arms Race Nutrition Daily Pump
26 Stim-Free Pre-Workout Venice Beach, (13) Arms Race Nutrition Harness Pre-Workout Kiwi
27 Strawberry, (14) Arms Race Nutrition Stabilize Hormone Health Supplement, (15) Arms Race
28 Nutrition Daily Pump Stim-Free Pre-Workout Orange Twist, (16) Arms Race Nutrition

1 Elemental Multi-Vitamin And Joint Health, (17) Arms Race Nutrition Replenish Essential
2 Amino Acids (EAA/BCAA) Watermelon Candy, (18) Arms Race Nutrition Immunity Greens
3 Pineapple Mango, and (19) Arms Race Nutrition Immunity Greens Lemon Rush.

4 **1.2** ERC and Arms Race Nutrition and Dynamic Nutraceuticals are hereinafter
5 referred to individually as a “Party” or collectively as the “Parties.”

6 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
7 causes, helping safeguard the public from health hazards by reducing the use and misuse of
8 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
9 and encouraging corporate responsibility.

10 **1.4** For purposes of this Consent Judgment, the Parties agree that the Court has
11 jurisdiction to enforce this Consent Judgment and the terms and conditions of Proposition 65.

12 **1.5** The SAC is based on allegations contained in ERC’s Notices of Violation dated
13 January 13, 2022, January 25, 2022, February 1, 2022, and May 17, 2022, that were served on
14 the California Attorney General, other public enforcers, Arms Race Nutrition and Dynamic
15 Nutraceuticals (“Notices”). True and correct copies of the Notices dated January 13, 2022,
16 January 25, 2022, February 1, 2022, and May 17, 2022, are attached hereto as *Exhibits A, B, C,*
17 *and D*, and each is incorporated herein by reference. More than 60 days have passed since the
18 Notices were served on the Attorney General, public enforcers, Arms Race Nutrition and
19 Dynamic Nutraceuticals and no designated governmental entity has filed a Complaint against
20 Arms Race Nutrition and Dynamic Nutraceuticals with regard to the Covered Products or the
21 alleged violations.

22 **1.6** ERC’s Notices and SAC allege that use of the Covered Products by California
23 consumers exposes them to lead without first receiving clear and reasonable warnings from
24 Arms Race Nutrition and Dynamic Nutraceuticals, which is in violation of California Health
25 and Safety Code section 25249.6. Arms Race Nutrition and Dynamic Nutraceuticals deny all
26 material allegations contained in the Notices and SAC.

27 **1.7** The Parties have entered into this Consent Judgment in order to settle,
28 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
2 or be construed as an admission by any of the Parties or by any of their respective officers,
3 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
4 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
5 issue of law, or violation of law.

6 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
7 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
8 any current or future legal proceeding unrelated to these proceedings.

9 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
10 as a Judgment by this Court.

11 **2. JURISDICTION AND VENUE**

12 For purposes of this Consent Judgment and any further court action that may become
13 necessary to enforce this Consent Judgment or in connection with the terms and conditions of
14 Proposition 65, the Parties stipulate that this Court has personal jurisdiction over Arms Race
15 Nutrition and Dynamic Nutraceuticals as to the acts alleged in the SAC, that venue is proper in
16 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
17 final resolution of all claims up through and including the Effective Date that were or could have
18 been asserted in this action based on the facts alleged in the Notices and SAC.

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

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

26 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
27 of California” shall mean to directly ship a Covered Product into California for sale in
28 California or to sell a Covered Product to a distributor that Arms Race Nutrition and Dynamic

1 Nutraceuticals know or have reason to know will sell the Covered Product in California.

2 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
3 Level” shall be measured in micrograms, and shall be calculated using the following formula:
4 micrograms of lead per gram of product, multiplied by grams of product per serving of the
5 product (using the largest serving size appearing on the product label), multiplied by servings
6 of the product per day (using the largest number of recommended daily servings appearing on
7 the label), which equals micrograms of lead exposure per day. If the label contains no
8 recommended daily servings, then the number of recommended daily servings shall be one.

9 **3.2 Clear and Reasonable Warnings**

10 If Arms Race Nutrition and Dynamic Nutraceuticals are required to provide a warning
11 pursuant to Section 3.1, one of the following warnings must be utilized (“Warning”):

12 **OPTION 1:**

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

OR

16 **OPTION 2:**



18 **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food

19 Arms Race Nutrition and Dynamic Nutraceuticals shall use the phrase “cancer and” in the
20 Warning if Arms Race Nutrition and Dynamic Nutraceuticals have reason to believe that the
21 “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the
22 quality control methodology set forth in Section 3.4 or if Arms Race Nutrition and Dynamic
23 Nutraceuticals have reason to believe that another Proposition 65 chemical is present which may
24 require a cancer warning. As identified in the brackets, the warning shall appropriately reflect
25 whether there is lead present in each of the Covered Products. For the Option 2 Warning, a
26 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
27 outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of
28 the word “**WARNING.**” Where the sign, label or shelf tag for the product is not printed using the

1 color yellow, the symbol may be printed in black and white. The following Consumer Product
2 Exposure Warning language currently in use as an on-product warning by Arms Race Nutrition is
3 in compliance with the requirements of this Section and 27 C.C.R. § 25600 et seq.:

4 **WARNING:** Consuming this product can expose you to chemicals including lead, which
5 is known to the State of California to cause cancer. For more information, go to
6 www.P65Warnings.ca.gov.

7 The Warning shall be securely affixed to or printed upon the label of each Covered
8 Product and it must be set off from other surrounding information and enclosed in a box. In
9 addition, for any Covered Product sold over the internet, the Warning shall comply with 27
10 C.C.R. § 25600(b) (2022) including appearing on the product display page or checkout page
11 when a California delivery address is indicated for any purchase of any Covered Product. An
12 asterisk or other identifying method must be utilized to identify which products on the
13 checkout page are subject to the Warning. The Warning may be provided with a conspicuous
14 hyperlink stating “**WARNING**” in all capital and bold letters so long as the hyperlink goes
15 directly to a page prominently displaying the Warning without content that substantively
16 detracts from the Warning.

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

23 Arms Race Nutrition and Dynamic Nutraceuticals must display the above Warning with
24 such conspicuousness, as compared with other words, statements or designs on the label, or on its
25 website, if applicable, to render the Warning likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use of the product.

27 For purposes of this Consent Judgment, the term “label” means a display of written,
28 printed or graphic material that is printed on or affixed to a Covered Product or its immediate

1 container or wrapper.

2 **3.3 Conforming Covered Products**

3 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
4 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure
5 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
6 3.4, and that is not known by Arms Race Nutrition and Dynamic Nutraceuticals to contain other
7 chemicals that violate Proposition 65’s safe harbor thresholds.

8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** Beginning within one year of the Effective Date, except in the case of
10 any Covered Product for which Arms Race Nutrition is providing a Warning as set forth
11 herein, as provided in Section 3.4.7, below, Arms Race Nutrition and Dynamic Nutraceuticals
12 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
13 five consecutive years by arranging for testing of three (3) randomly selected samples of each
14 of the Covered Products, in the form intended for sale to the end-user, which Arms Race
15 Nutrition and Dynamic Nutraceuticals intend to sell or are manufacturing for sale in California,
16 directly selling to a consumer in California or “Distributing into the State of California.” If
17 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered
18 Product during each of five consecutive years, then the testing requirements of this Section will
19 no longer be required as to that Covered Product. However, if during or after the five-year
20 testing period, Arms Race Nutrition and Dynamic Nutraceuticals change ingredient suppliers
21 for any of the Covered Products and/or reformulate any of the Covered Products, Arms Race
22 Nutrition and Dynamic Nutraceuticals shall test that Covered Product annually for at least four
23 (4) consecutive years after such change is made.

24 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
25 lead detection result of the three (3) randomly selected samples of the Covered Products will
26 be controlling.

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

1 for the method used, including limit of detection and limit of quantification, sensitivity,
2 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
3 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
4 mg/kg.

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

9 **3.4.5** Nothing in this Consent Judgment shall limit Arms Race Nutrition and
10 Dynamic Nutraceuticals’ ability to conduct, or require that others conduct, additional testing of
11 the Covered Products, including the raw materials used in their manufacture.

12 **3.4.6** Within forty-five (45) days of ERC’s written request, for any Covered
13 Product that requires testing or has been tested Arms Race Nutrition and Dynamic
14 Nutraceuticals shall deliver any such lab reports obtained pursuant to Section 3.4 to ERC.
15 Arms Race Nutrition and Dynamic Nutraceuticals shall retain all test results and
16 documentation for a period of five years from the date of each test.

17 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
18 any Covered Product for which Arms Race Nutrition and Dynamic Nutraceuticals are
19 providing a Warning, continuously and without interruption from the Effective Date, pursuant
20 to Section 3.2 of this Consent Judgment. In the event a Warning is provided after the Effective
21 Date but Arms Race Nutrition or Dynamic Nutraceuticals thereafter cease to provide the
22 Warning, the testing and reporting requirements of Section 3.4 of this Consent Judgment shall
23 apply beginning within one year after the date the Warning ceases to be provided, unless Arms
24 Race Nutrition and Dynamic Nutraceuticals can show to the satisfaction of ERC that the
25 cessation in providing the Warning was a temporary error that was resolved when discovered.

26 **4. SETTLEMENT PAYMENT**

27 **4.1** In full satisfaction of all potential civil penalties, additional settlement
28 payments, attorney’s fees, and costs, Arms Race Nutrition and Dynamic Nutraceuticals shall

1 make a total payment of \$60,000.00 (“Total Settlement Amount”) to ERC in two periodic
2 payments (the “Periodic Payments”) according to the following payment schedule (“Due
3 Dates”):

- 4 • Payment 1 -- \$30,000.00 within 5 days of the Effective Date.
- 5 • Payment 2 -- \$30,000.00 within 35 days of the Effective Date.

6 Arms Race Nutrition and Dynamic Nutraceuticals shall make these Periodic Payments
7 by wire transfer to ERC’s account, for which ERC will give Arms Race Nutrition and Dynamic
8 Nutraceuticals the necessary account information. The Total Settlement Amount shall be
9 apportioned as follows:

10 **4.2** \$30,000.00 shall be considered a civil penalty pursuant to California Health and
11 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$22,500.00) of the civil penalty to
12 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
13 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
14 Code section 25249.12(c). ERC will retain the remaining 25% (\$7,500.00) of the civil penalty.

15 **4.3** \$11,891.02 shall be distributed to ERC as reimbursement to ERC for reasonable
16 costs incurred in bringing this action.

17 **4.4** \$18,108.98 shall be distributed to ERC for its in-house legal fees. Except as
18 explicitly provided herein, each Party shall bear its own fees and costs.

19 **4.5** In the event that Arms Race Nutrition and Dynamic Nutraceuticals fail to remit
20 the full Periodic Payments owed under Section 4.1 of this Consent Judgment on or before the
21 applicable Due Date, Arms Race Nutrition and Dynamic Nutraceuticals shall be deemed to be
22 in material breach of their obligations under this Consent Judgment. ERC shall provide written
23 notice of the delinquency to Arms Race Nutrition and Dynamic Nutraceuticals via electronic
24 mail. If Arms Race Nutrition and Dynamic Nutraceuticals fail to deliver the delinquent
25 payment within five (5) days from the written notice, the Total Settlement Amount, less any
26 amounts previously paid pursuant to Section 4.1, shall be immediately due and owing and shall
27 accrue interest at the statutory judgment interest rate provided in the California Code of Civil
28 Procedure section 685.010. Additionally, Arms Race Nutrition and Dynamic Nutraceuticals

1 agree to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment
2 due under this Consent Judgment.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 **5.1** This Consent Judgment may be modified only as to injunctive terms by written
5 stipulation of the Parties and upon entry by the Court of a modified consent judgment.

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

20 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
21 **JUDGMENT**

22 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
23 terminate this Consent Judgment.

24 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
25 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
26 inform Arms Race Nutrition and Dynamic Nutraceuticals in a reasonably prompt manner of its
27 test results, including information sufficient to permit Arms Race Nutrition and Dynamic
28 Nutraceuticals to identify the Covered Products at issue. Arms Race Nutrition and Dynamic

1 Nutraceuticals shall, within thirty (30) days following such notice, provide ERC with testing
2 information, from an independent third-party laboratory meeting the requirements of Sections
3 3.4.3 and 3.4.4, demonstrating Arms Race Nutrition's and Dynamic Nutraceuticals'
4 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter
5 prior to ERC taking any further legal action.

6 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

14 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
15 on behalf of itself and in the public interest, and Arms Race Nutrition, LLC, Newport News
16 Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition
17 Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Crush It
18 Holdings, LLC, Crush It International, Inc., Dynamic Nutraceuticals, L.L.C., and their
19 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
20 divisions, suppliers, franchisees, licensees, customers (not including private label customers of
21 Arms Race Nutrition and/or Dynamic Nutraceuticals), distributors, wholesalers, retailers, and
22 all other upstream and downstream entities in the distribution chain of any Covered Product,
23 and the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

24 **8.2** ERC, acting in the public interest, releases the Released Parties from any
25 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
26 to lead from the Covered Products as set forth in the Notices. ERC, on behalf of itself only,
27 hereby fully releases and discharges the Released Parties from any and all claims, actions,
28 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses

1 asserted, or that could have been asserted from the handling, use, or consumption of the
2 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
3 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
4 lead up to and including the Effective Date.

5 **8.3** ERC on its own behalf only, and Arms Race Nutrition and Dynamic
6 Nutraceuticals on their own behalf only, further waive and release any and all claims they may
7 have against each other for all actions or statements made or undertaken in the course of
8 seeking or opposing enforcement of Proposition 65 in connection with the Notices and SAC up
9 through and including the Effective Date, provided, however, that nothing in Section 8 shall
10 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

11 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
12 alleged in the Notices and SAC, and relating to the Covered Products, will develop or be
13 discovered. ERC on behalf of itself only, and Arms Race Nutrition and Dynamic
14 Nutraceuticals on behalf of themselves only, acknowledge that this Consent Judgment is
15 expressly intended to cover and include all such claims up through and including the Effective
16 Date, including all rights of action therefore. ERC and Arms Race Nutrition and Dynamic
17 Nutraceuticals acknowledge that the claims released in Sections 8.2 and 8.3 above may include
18 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
19 unknown claims. California Civil Code section 1542 reads as follows:

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

24 ERC on behalf of itself only, and Arms Race Nutrition and Dynamic Nutraceuticals on behalf
25 of themselves only, acknowledge and understand the significance and consequences of this
26 specific waiver of California Civil Code section 1542.

27 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
28 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged

1 exposures to lead in the Covered Products as set forth in the Notices and SAC.

2 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
3 environmental exposures arising under Proposition 65, nor shall it apply to any of Arms Race
4 Nutrition's and Dynamic Nutraceuticals' products other than the Covered Products.

5 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

9 **10. GOVERNING LAW**

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

12 **11. PROVISION OF NOTICE**

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

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

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

22 With a copy to:

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

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1 **FOR ARMS RACE NUTRITION, LLC; NEWPORT NEWS NUTRITION CORNER,**
2 **LLC; ARLINGTON NUTRITION CORNER, LLC; CORE NUTRITIONALS LLC;**
3 **CRUSH IT HOLDINGS, LLC; CRUSH IT INTERNATIONAL, INC.:**

4 Doug Miller
5 Managing Member
6 1415 Wilkesboro Hwy
7 Statesville, NC 28625
8 Email: doug@corenutritionals.com

9 **FOR DYNAMIC NUTRACEUTICALS, L.L.C.:**

10 Dynamic Nutraceuticals
11 1441 Wilkesboro Hwy
12 Statesville, NC 28625
13 Ph: (704) 651-8186

14 With a copy to:

15 Garth N. Ward
16 Lewis Brisbois Bisgaard & Smith LLP
17 550 West C Street, Ste 1700
18 San Diego, CA 92101
19 Ph: (619) 699-4952
20 Email: Garth.Ward@lewisbrisbois.com

21 and

22 Lawrence R. LaPorte (SBN 130003)
23 Lewis Brisbois Bisgaard & Smith LLP
24 633 West 5th Street, Ste 4000
25 Los Angeles, CA 90071
26 Ph: (213) 580-6396
27 Email: Lawrence.LaPorte@lewisbrisbois.com

28 **12. COURT APPROVAL**

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

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

12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be

1 void and have no force or effect.

2 **13. EXECUTION AND COUNTERPARTS**

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

6 **14. DRAFTING**

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

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

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

20 **16. ENFORCEMENT**

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

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 **17.1** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, including any and
4 all prior discussions, negotiations, commitments, and understandings related thereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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1 **IT IS SO STIPULATED:**


2 Dated: 11/11, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC

3
4 By: 
Chris Heptinstall, Executive Director


5
6 Dated: November 10, 2022

ARMS RACE NUTRITION, LLC:

7
8 
9 By: DOUGLAS A MILLER
Its: MANAGING MEMBER


10
11
12 Dated: November 10, 2022

NEWPORT NEWS NUTRITION
CORNER, LLC, individually and dba THE
NUTRITION CORNERS:

13
14 
15 By: DOUGLAS A MILLER
16 Its: OWNER

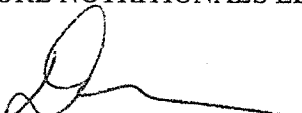
17
18 Dated: November 10, 2022

ARLINGTON NUTRITION CORNER,
LLC, individually and dba THE
NUTRITION CORNERS::

19
20 
21 By: DOUGLAS A MILLER
22 Its: OWNER

23
24 Dated: November 10, 2022

CORE NUTRITIONALS LLC:


25
26 
27 By: DOUGLAS A MILLER
28 Its: OWNER

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APPROVED AS TO FORM:


Dated: November 11, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Charles W. Poss
In-House Counsel

Dated: 11/10/, 2022

LEWIS BRISBOIS BISGAARD & SMITH
LLP

By: 
Garth Ward
Lawrence R. LaPorte
Attorneys for Arms Race Nutrition, LLC,
Newport News Nutrition Corner, LLC,
individually and dba The Nutrition
Corners, Arlington Nutrition Corner, LLC,
individually and dba The Nutrition
Corners, Core Nutritionals LLC, Dynamic
Nutraaceuticals, L.L.C., Crush It Holdings,
LLC, and Crush It International, Inc.

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: _____, 2023 _____
Judge of the Superior Court

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EXHIBIT A



Environmental Research Center

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

January 13, 2022

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:

Arms Race Nutrition, LLC
Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
Core Nutritionals LLC
Dynamic Nutraceuticals, L.L.C.
Crush It Holdings, LLC
Crush It International, Inc.

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. **Arms Race Nutrition Harness Pre-Workout Black Cherry - Lead**
2. **Arms Race Nutrition Harness Pre-Workout Pineapple Mango - Lead**
3. **Arms Race Nutrition Harness Pre-Workout Lemon Rush - Lead**
4. **Arms Race Nutrition Daily Pump Stim-Free Pre-Workout Big Sky - Lead**
5. **Arms Race Nutrition Foundation Protein Blend S'Mores - Lead**
6. **Arms Race Nutrition Foundation Protein Blend 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 January 13, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

January 13, 2022

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 Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, Crush It International, Inc., 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 Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, and Crush It International, Inc.

I, Chris Heptinstall, declare:

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

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

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

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

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



Dated: January 13, 2022

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On January 13, 2022, 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
Arms Race Nutrition, LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
820 N Pollard St RTL #3
Arlington, VA 22203

Current President or CEO
Core Nutritionals LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
12551 Jefferson Ave, Ste 193
Newport News, VA 23602

Current President or CEO
Core Nutritionals LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
1415 Wilkesboro Hwy
Statesville, NC 28625

Douglas Allen Miller
(Registered Agent for Newport News Nutrition
Corner, LLC, individually and dba The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Douglas A. Miller
(Registered Agent for Arlington Nutrition
Corner, LLC, individually and The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Douglas A Miller
(Registered Agent for Arms Race Nutrition,
LLC)
1415 Wilkesboro Hwy
Statesville, NC 28625

Douglas Allen Miller
(Registered Agent for Arms Race Nutrition,
LLC)
604 Ware St SW
Vienna, VA 22180

Douglas A. Miller
(Registered Agent for Core Nutritionals LLC)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Dynamic Nutraceuticals, L.L.C.
1551 Salisbury Rd
Statesville, NC 28677

Current President or CEO
Crush It International, Inc.
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Crush It Holdings, LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Jason D. Wolff
(Registered Agent for Dynamic
Nutraceuticals, L.L.C.)
1551 Salisbury Rd
Statesville, NC 28677

Douglas Allen Miller
(Registered Agent for Crush It Holdings, LLC)
604 Ware St SW
Vienna, VA 22180

Douglas Allen Miller
(Registered Agent for Crush It International, Inc.)
604 Ware St SW
Vienna, VA 22180

Douglas A Miller
(Registered Agent for Core Nutritionals
LLC)
1415 Wilkesboro Hwy
Statesville, NC 28625

On January 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

January 13, 2022

Page 7

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

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

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

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

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

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

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

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

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

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

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

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

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, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

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

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

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

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

January 13, 2022

Page 8

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

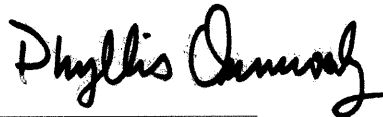
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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 January 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 13, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, 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
Post Office Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT B



Environmental Research Center

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

January 25, 2022

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:

Arms Race Nutrition, LLC
Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
Core Nutritionals LLC
Dynamic Nutraceuticals, L.L.C.
Crush It Holdings, LLC
Crush It International, Inc.

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. **Arms Race Nutrition Foundation Protein Blend Apple Fritter - Lead**
2. **Arms Race Nutrition Daily Pump Stim-Free Pre-Workout Bombsicle - Lead**
3. **Arms Race Nutrition Daily Pump Stim-Free Pre-Workout Pineapple Mango - Lead**
4. **Arms Race Nutrition Harness Pre-Workout Limeade - Lead**
5. **Arms Race Nutrition Daily Pump Stim-Free Pre-Workout Tart Candy Strings - Lead**
6. **Arms Race Nutrition Daily Pump Stim-Free Pre-Workout Venice Beach - Lead**
7. **Arms Race Nutrition Harness Pre-Workout Kiwi Strawberry - Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 25, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

January 25, 2022

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 Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, Crush It International, Inc., 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 Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, Crush It International, Inc.,

I, Chris Heptinstall, declare:

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

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

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

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

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



Dated: January 25, 2022

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On January 25, 2022, 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
Arms Race Nutrition, LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
820 N Pollard St RTL #3
Arlington, VA 22203

Current President or CEO
Core Nutritionals LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
12551 Jefferson Ave, Ste 193
Newport News, VA 23602

Current President or CEO
Core Nutritionals LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
1415 Wilkesboro Hwy
Statesville, NC 28625

Douglas Allen Miller
(Registered Agent for Newport News Nutrition
Corner, LLC, individually and dba The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Douglas A. Miller
(Registered Agent for Arlington Nutrition
Corner, LLC, individually and The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Douglas A Miller
(Registered Agent for Arms Race Nutrition,
LLC)
1415 Wilkesboro Hwy
Statesville, NC 28625

Douglas Allen Miller
(Registered Agent for Arms Race Nutrition,
LLC)
604 Ware St SW
Vienna, VA 22180

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

January 25, 2022

Page 6

Douglas A. Miller
(Registered Agent for Core Nutritionals LLC)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Dynamic Nutraceuticals, L.L.C.
1551 Salisbury Rd
Statesville, NC 28677

Current President or CEO
Crush It International, Inc.
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Crush It Holdings, LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Jason D. Wolff
(Registered Agent for Dynamic
Nutraceuticals, L.L.C.)
1551 Salisbury Rd
Statesville, NC 28677

Douglas Allen Miller
(Registered Agent for Crush It Holdings, LLC)
604 Ware St SW
Vienna, VA 22180

Douglas Allen Miller
(Registered Agent for Crush It International, Inc.)
604 Ware St SW
Vienna, VA 22180

Douglas A Miller
(Registered Agent for Core Nutritionals
LLC)
1415 Wilkesboro Hwy
Statesville, NC 28625

On January 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

January 25, 2022

Page 7

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

Michelle Latimer, Program Coordinator
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220 S. Lassen Street
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Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

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

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CEPD@countyofnapa.org

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

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Roseville, CA 95678
Prop65@placer.ca.gov

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520 Main St
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davidhollister@countyofplumas.com

Paul E. Zellerbach, District Attorney
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Riverside, CA 92501
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

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

Alexandra Grayner, Assistant District Attorney
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San Francisco, CA 94103
Alexandra.grayner@sfgov.org

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

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

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

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

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

January 25, 2022

Page 8

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

Nora V. Frimann, City Attorney
San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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

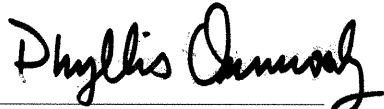
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 January 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 25, 2022, 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
310 6th St
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, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, 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
Post Office Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097
District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT C



Environmental Research Center

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

February 1, 2022

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:

Arms Race Nutrition, LLC
Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
Core Nutritionals LLC
Dynamic Nutraceuticals, L.L.C.
Crush It Holdings, LLC
Crush It International, Inc.

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. **Arms Race Nutrition Stabilize Hormone Health Supplement - Lead**
2. **Arms Race Nutrition Daily Pump Stim-Free Pre-Workout Orange Twist - Lead**
3. **Arms Race Nutrition Elemental Multi-Vitamin And Joint Health - Lead**
4. **Arms Race Nutrition Replenish Essential Amino Acids (EAA/BCAA) Watermelon Candy - Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 1, 2019, 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.

February 1, 2022

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 Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, Crush It International, Inc., 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 Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, Crush It International, Inc.,

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: February 1, 2022

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On February 1, 2022, 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
Arms Race Nutrition, LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
820 N Pollard St RTL #3
Arlington, VA 22203

Current President or CEO
Core Nutritionals LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
12551 Jefferson Ave, Ste 193
Newport News, VA 23602

Current President or CEO
Core Nutritionals LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
1415 Wilkesboro Hwy
Statesville, NC 28625

Douglas Allen Miller
(Registered Agent for Newport News Nutrition
Corner, LLC, individually and dba The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Douglas A. Miller
(Registered Agent for Arlington Nutrition
Corner, LLC, individually and The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Douglas A Miller
(Registered Agent for Arms Race Nutrition,
LLC)
1415 Wilkesboro Hwy
Statesville, NC 28625

Douglas Allen Miller
(Registered Agent for Arms Race Nutrition,
LLC)
604 Ware St SW
Vienna, VA 22180

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

February 1, 2022

Page 6

Douglas A. Miller
(Registered Agent for Core Nutritionals LLC)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Dynamic Nutraceuticals, L.L.C.
1551 Salisbury Rd
Statesville, NC 28677

Current President or CEO
Crush It International, Inc.
1415 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Crush It Holdings, LLC
1415 Wilkesboro Hwy
Statesville, NC 28625

Jason D. Wolff
(Registered Agent for Dynamic
Nutraceuticals, L.L.C.)
1551 Salisbury Rd
Statesville, NC 28677

Douglas Allen Miller
(Registered Agent for Crush It Holdings, LLC)
604 Ware St SW
Vienna, VA 22180

Douglas Allen Miller
(Registered Agent for Crush It International, Inc.)
604 Ware St SW
Vienna, VA 22180

Douglas A Miller
(Registered Agent for Core Nutritionals
LLC)
1415 Wilkesboro Hwy
Statesville, NC 28625

On February 1, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On February 1, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

February 1, 2022

Page 7

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

Michelle Latimer, Program Coordinator
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220 S. Lassen Street
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Walter W. Wall, District Attorney
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P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

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

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

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

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Roseville, CA 95678
Prop65@placer.ca.gov

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davidhollister@countyofplumas.com

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

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

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

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

Alexandra Grayner, Assistant District Attorney
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350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

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

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

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

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

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

February 1, 2022

Page 8

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

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

Nora V. Frimann, City Attorney
San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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

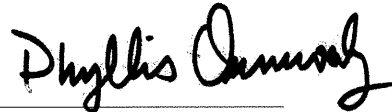
Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

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

On February 1, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on February 1, 2022, 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
310 6th St
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, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, 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
Post Office Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT D



Environmental Research Center

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

May 17, 2022

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:

Arms Race Nutrition, LLC

Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners

Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners

Core Nutritionals LLC

Dynamic Nutraceuticals, L.L.C.

Crush It Holdings, LLC

Crush It International, Inc.

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. Arms Race Nutrition Immunity Greens Pineapple Mango - Lead**
- 2. Arms Race Nutrition Immunity Greens Lemon Rush - 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 May 17, 2019, 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.

May 17, 2022

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 Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, Crush It International, Inc., and their Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Arms Race Nutrition, LLC, Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners, Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners, Core Nutritionals LLC, Dynamic Nutraceuticals, L.L.C., Crush It Holdings, LLC, and Crush It International, Inc.

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: May 17, 2022

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 May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: **NOTICE OF VIOLATION 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”** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through its attorney pursuant to agreement:

Arms Race Nutrition, LLC; Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; Core Nutritionals LLC; Dynamic Nutraceuticals, L.L.C.; Crush It Holdings, LLC; Crush It International, Inc.
c/o Garth N. Ward
Lewis Brisbois Bisgaard & Smith LLP
550 West C Street, Suite 1700
San Diego, CA 92101
Email: Garth.Ward@lewisbrisbois.com

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

May 17, 2022

Page 6

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sgrassini@contracostada.org

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Jeannine M. Pacioni, District Attorney
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Santa Ana, CA 92703
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SanDiegoDAProp65@sdca.org

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

Alexandra Grayner, Assistant District Attorney
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Alexandra.grayner@sfgov.org

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

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

May 17, 2022

Page 7

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San Joaquin County
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DAConsumer.Environmental@sjcda.org

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EPU@da.sccgov.org

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Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney
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Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

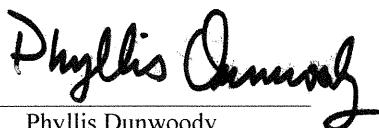
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 May 17, 2022, 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 May 17, 2022, 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
310 6th St
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, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, 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, 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
Post Office Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097
District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
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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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.