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18 individually and dba Healthy Truth

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

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

24 **Plaintiff,**

25 **vs.**

26 **HEALTHY TRUTH LLC, individually and**
27 **dba ORGANIC LIVING SUPERFOODS;**
28 **ORGANIC LIVING SUPERFOODS, LLC,**
individually and dba HEALTHY TRUTH;
and DOES 1-100

Defendants.

CASE NO. 22CV020100

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 20, 2022

Trial Date: May 20, 2024

1. INTRODUCTION

1.1 On October 20, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a

1 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
2 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
3 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
4 (“Proposition 65”), against Healthy Truth LLC, individually and dba Organic Living
5 Superfoods and Organic Living Superfoods, LLC, individually and dba Healthy Truth
6 (collectively “Healthy Truth”) and Does 1-100. In this action, ERC alleges that a number of
7 products manufactured, distributed, or sold by Healthy Truth contain lead and/or cadmium
8 and/or mercury, chemicals listed under Proposition 65 as carcinogens and/or reproductive
9 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.
10 These products (referred to hereinafter individually as a “Covered Product” or collectively as
11 “Covered Products”) are: (1) Healthy Truth Performance + Recovery Go Pro Cacao (lead,
12 cadmium), (2) Healthy Truth Performance + Recovery Go Green Unflavored (lead), (3)
13 Healthy Truth Performance + Recovery Go Red Super Berry (lead), (4) Healthy Truth
14 Performance + Recovery Go Gold Lemon + Ginger (lead), (5) Healthy Truth Raw Maca Root
15 Powder (lead), (6) Healthy Truth Raw Spirulina Powder (lead), (7) Healthy Truth Caffeine-
16 Free Golden Milk Pumpkin Spice Latte (lead), (8) Healthy Truth Raw Cacao Powder (lead,
17 cadmium), (9) Healthy Truth Organic Living Superfoods Crunch Time Sprouted Banana
18 Protein Crunch (cadmium, mercury), (10) Healthy Truth Caffeine-Free Golden Milk Cinnamon
19 Spice Latte (lead), (11) Healthy Truth Performance + Recovery Go Pro Unflavored (lead), (12)
20 Healthy Truth Performance + Recovery Go Pre-Workout Sweet Beet (lead), (13) Healthy
21 Truth Performance + Recovery Plant Based Protein Bar Cacao (lead, cadmium), (14) Healthy
22 Truth Performance + Recovery Plant Based Protein Bar Mixed Berry (cadmium), (15) Organic
23 Living Superfoods Life by Chocolate Superfruit Mix (lead), (16) Organic Living Superfoods
24 Life by Chocolate Dark Chocolate Coconut Chips (lead, cadmium), (17) Organic Living
25 Superfoods Crunch Time Sprouted Ceylon Cinnamon Crunch (lead), and (18) Organic Living
26 Superfoods Crunch Time Sprouted Blueberry Hemp Protein Crunch (cadmium).

27 **1.2** ERC and Healthy Truth are hereinafter referred to individually as a “Party” or
28 collectively as the “Parties.”

1 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
2 causes, helping safeguard the public from health hazards by reducing the use and misuse of
3 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
4 and encouraging corporate responsibility.

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

9 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
10 dated May 3, 2022, May 10, 2022, May 17, 2022, and July 6, 2022 that were served on the
11 California Attorney General, other public enforcers, and Healthy Truth (“Notices”). True and
12 correct copies of the 60-Day Notices dated May 3, 2022, May 10, 2022, May 17, 2022, and
13 July 6, 2022 are attached hereto as **Exhibits A, B, C, and D** and each is incorporated herein by
14 reference. More than 60 days have passed since the Notices were served on the Attorney
15 General, public enforcers, and Healthy Truth and no designated governmental entity has filed a
16 Complaint against Healthy Truth with regard to the Covered Products or the alleged violations.

17 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
18 California consumers exposes them to lead and/or cadmium and/or mercury without first
19 receiving clear and reasonable warnings from Healthy Truth, which is in violation of California
20 Health and Safety Code section 25249.6. Healthy Truth denies all material allegations
21 contained in the Notices and Complaint.

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

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

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

6 **2. JURISDICTION AND VENUE**

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

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

15 **3.1** Beginning on the Effective Date, Healthy Truth shall be permanently enjoined
16 from manufacturing for sale in the State of California, “Distributing into the State of
17 California,” or directly selling in the State of California, any Covered Product that exposes a
18 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
19 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day and/or
20 “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it
21 meets the warning requirements under Section 3.2.

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

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

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

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

13 **3.1.4** For purposes of this Consent Judgment, the “Daily Mercury Exposure
14 Level” shall be measured in micrograms, and shall be calculated using the following formula:
15 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
16 product (using the largest serving size appearing on the product label), multiplied by servings
17 of the product per day (using the largest number of recommended daily servings appearing on
18 the label), which equals micrograms of mercury exposure per day. If the label contains no
19 recommended daily servings, then the number of recommended daily servings shall be one.

20 **3.2 Clear and Reasonable Warnings**

21 If Healthy Truth is required to provide a warning pursuant to Section 3.1, the following
22 warning must be utilized (“Warning”):

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

26 Healthy Truth shall use the phrase “cancer and” in the Warning if Healthy Truth has
27 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
28 determined pursuant to the quality control methodology set forth in Section 3.4 or if Healthy

1 Truth has reason to believe that another Proposition 65 chemical is present which may require a
2 cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there
3 is lead, cadmium, mercury, or multiple chemicals present in each of the Covered Products, but if
4 there is a chemical present at a level that requires a cancer warning, the chemical requiring use of
5 the phrase “cancer and” in the Warning shall always be identified.

6 The Warning shall be securely affixed to or printed upon the label of each Covered
7 Product and it must be set off from other surrounding information and enclosed in a box. In
8 addition, for any Covered Product sold over the internet, the Warning shall appear on the
9 checkout page when a California delivery address is indicated for any purchase of any Covered
10 Product. An asterisk or other identifying method must be utilized to identify which products on
11 the checkout page are subject to the Warning. In no event shall any internet or website
12 Warning be contained in or made through a link.

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

19 Healthy Truth must display the above Warning with such conspicuousness, as compared
20 with other words, statements or designs on the label, or on its website, if applicable, to render the
21 Warning likely to be read and understood by an ordinary individual under customary conditions
22 of purchase or use of the product. Where a sign or label used to provide the Warning for a
23 Covered Product includes consumer information about the Covered Product in a language other
24 than English, the Warning must also be provided in that language in addition to English.

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

28 ///

1 **3.3 Conforming Covered Products**

2 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
3 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Cadmium Exposure
4 Level” is no greater than 4.1 micrograms of cadmium per day and/or the “Daily Mercury
5 Exposure Level” is no greater than 0.3 micrograms of mercury per day as determined by the
6 exposure methodology set forth in Section 3.1.2 and the quality control methodology described in
7 Section 3.4, and that is not known by Healthy Truth to contain other chemicals that violate
8 Proposition 65’s safe harbor thresholds.

9 **3.4 Testing and Quality Control Methodology**

10 **3.4.1** Beginning within one year of the Effective Date, Healthy Truth shall
11 arrange for lead and cadmium and mercury testing of the Covered Products at least once a year
12 for a minimum of five consecutive years by arranging for testing of three (3) randomly selected
13 samples of each of the Covered Products, in the form intended for sale to the end-user, which
14 Healthy Truth intends to sell or is manufacturing for sale in California, directly selling to a
15 consumer in California or “Distributing into the State of California.” If tests conducted
16 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
17 each of five consecutive years, then the testing requirements of this Section will no longer be
18 required as to that Covered Product. However, if during or after the five-year testing period,
19 Healthy Truth changes ingredient suppliers for any of the Covered Products and/or
20 reformulates any of the Covered Products, Healthy Truth shall test that Covered Product
21 annually for at least four (4) consecutive years after such change is made.

22 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
23 “Daily Cadmium Exposure Level” and/or the “Daily Mercury Exposure Level,” the highest
24 lead and/or cadmium and/or mercury detection result of the three (3) randomly selected
25 samples of the Covered Products will be controlling.

26 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
27 laboratory method that complies with the performance and quality control factors appropriate
28 for the method used, including limit of detection and limit of quantification, sensitivity,

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

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

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

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

14 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
15 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
16 testing meets the requirements of Sections 3.4.3 and 3.4.4.

17 **4. SETTLEMENT PAYMENT**

18 **4.1** In full satisfaction of all potential civil penalties, additional settlement
19 payments, attorney’s fees, and costs, Healthy Truth shall make a total payment of \$100,000.00
20 (“Total Settlement Amount”) to ERC. The Total Settlement Amount shall be paid in six (6)
21 periodic payments (“Periodic Payments”) with the following due dates (“Due Dates”):

22 Payment No. 1: \$15,000.00 paid no later than June 9, 2024.

23 Payment No. 2: \$15,000.00 paid no later than July 9, 2024.

24 Payment No. 3: \$15,000.00 paid no later than August 9, 2024.

25 Payment No. 4: \$15,000.00 paid no later than September 9, 2024.

26 Payment No. 5: \$15,000.00 paid no later than October 9, 2024.

27 Payment No. 6: \$25,000.00 paid no later than November 9, 2024.

28 Healthy Truth shall make the above payments by wire transfer to ERC’s account, for

1 which ERC will give Healthy Truth the necessary account information. The Total Settlement
2 Amount shall be apportioned as follows:

3 **4.2** \$12,500.00 shall be considered a civil penalty pursuant to California Health and
4 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$9,375.00) of the civil penalty to the
5 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
6 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
7 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,125.00) of the civil penalty.

8 **4.3** \$10,652.04 shall be distributed to ERC as reimbursement to ERC for reasonable
9 costs incurred in bringing this action.

10 **4.4** \$38,096.95 shall be distributed to Lozeau Drury LLP as reimbursement of
11 ERC’s attorney fees, while \$38,751.01 shall be distributed to ERC for its in-house legal fees.
12 Except as explicitly provided herein, each Party shall bear its own fees and costs.

13 **4.5** In the event that Healthy Truth fails to remit, in full, any of the Periodic
14 Payments owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable
15 Due Date, Healthy Truth shall be deemed to be in material breach of its obligations under this
16 Consent Judgment. ERC shall provide written notice of the delinquency to Healthy Truth via
17 electronic mail. If Healthy Truth fails to deliver the delinquent payment within five (5) days
18 of the written notice, the Total Settlement Amount, less any amounts previously paid pursuant
19 to Section 4.1, shall be immediately due and owing and shall accrue interest at the statutory
20 judgment interest rate provided in the California Code of Civil Procedure section 685.010.
21 Additionally, Healthy Truth agrees to pay ERC’s reasonable attorney’s fees and costs for any
22 efforts to collect the payment due under this Consent Judgment.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

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

28 **5.2** If Healthy Truth seeks to modify this Consent Judgment under Section 5.1, then

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

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

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

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

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

1 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
10 on behalf of itself and in the public interest, and Healthy Truth and its respective officers,
11 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
12 franchisees, licensees, customers (not including private label customers of Healthy Truth),
13 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
14 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
15 of them (collectively, “Released Parties”).

16 **8.2** ERC, acting in the public interest, releases the Released Parties from any
17 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
18 to lead and/or cadmium and/or mercury from the Covered Products as set forth in the Notices
19 of Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released
20 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
21 penalties, fees, costs, and expenses asserted, or that could have been asserted from the
22 handling, use, or consumption of the Covered Products, as to any alleged violation of
23 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
24 65 warnings on the Covered Products regarding lead and/or cadmium and/or mercury up to and
25 including the Effective Date.

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

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

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

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

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

19 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
21 exposures to lead and/or cadmium and/or mercury in the Covered Products as set forth in the
22 Notices and Complaint.

23 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
24 environmental exposures arising under Proposition 65, nor shall it apply to any of Healthy
25 Truth's products other than the Covered Products.

26 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

27 In the event that any of the provisions of this Consent Judgment are held by a court to be
28 unenforceable, the validity of the remaining enforceable provisions shall not be adversely

1 affected.

2 **10. GOVERNING LAW**

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

5 **11. PROVISION OF NOTICE**

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

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

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

16 With a copy to:

17 Richard T. Drury
18 Brian B. Flynn
19 LOZEAU DRURY LLP
20 1939 Harrison Street, Suite 150
21 Oakland, CA 94612
22 Ph: 510-836-4200
23 Email: richard@lozeaudrury.com
24 brian@lozeaudrury.com

25 **FOR HEALTHY TRUTH LLC, individually and dba ORGANIC LIVING
26 SUPERFOODS; ORGANIC LIVING SUPERFOODS, LLC, individually and dba
27 HEALTHY TRUTH:**

28 Bruce Namenson, Founder/CCO
Healthy Truth, LLC
87 West Street
Walpole, MA 02081
Email: bruce@healthytruth.com

With a copy to:

Garth N. Ward
LEWIS BRISBOIS BISGAARD & SMITH LLP
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619-233-1006
Email: Garth.Ward@lewisbrisbois.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

1 **16. ENFORCEMENT**

2 ERC may, by motion or order to show cause before the Superior Court of Alameda
3 County, enforce the terms and conditions contained in this Consent Judgment. In any action
4 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
5 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
6 To the extent the failure to comply with the Consent Judgment constitutes a violation of
7 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
8 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
9 provided by law for failure to comply with Proposition 65 or other laws.

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

17 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

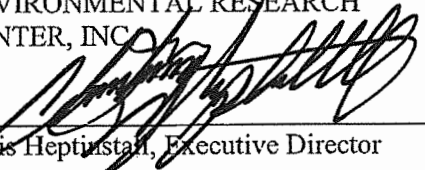
27 (2) Make the findings pursuant to California Health and Safety Code section
28 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

1 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
2 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

3 **IT IS SO STIPULATED:**


4
5 Dated: 12/15/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

6
7 By: 
8 Chris Heptinstall, Executive Director

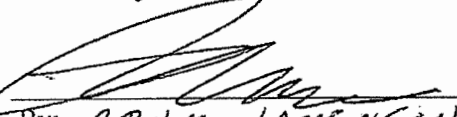
9 Dated: 12-15, 2023

HEALTHY TRUTH LLC, individually and
dba ORGANIC LIVING SUPERFOODS

10
11 
12 By: BRUCE NAMENSON
13 Its: PRESIDENT / CEO

14 Dated: 12-15, 2023

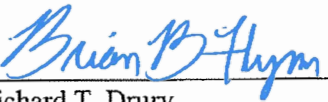
ORGANIC LIVING SUPERFOODS, LLC,
individually and dba HEALTHY TRUTH

15
16 
17 By: BRUCE NAMENSON
18 Its: PRESIDENT / CEO

19
20 **APPROVED AS TO FORM:**

21
22 Dated: December 15, 2023

LOZEAU | DRURY LLP

23
24
25 By: 
26 Richard T. Drury
27 Brian B. Flynn
28 Attorneys for Plaintiff Environmental
Research Center, Inc.

1 Dated: 12/15/2023

LEWIS BRISBOIS BISGAARD & SMITH
LLP

2
3 By: 

4 Garth N. Ward
5 Attorney for Defendants Healthy Truth
6 LLC, individually and dba Organic Living
7 Superfoods and Organic Living
8 Superfoods, LLC, individually and dba
9 Healthy Truth

10 **ORDER AND JUDGMENT**

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

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14
15 Dated: _____, 2024

16 Judge of the Superior Court

EXHIBIT A



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

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Organic Living Superfoods; Organic Living
Superfoods, LLC, individually and dba Healthy Truth
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Walpole, MA 02081

Edmund L. Poli III
(Registered Agent for Healthy Truth LLC, individually
and dba Organic Living Superfoods)
87 West St
Walpole, MA 02081

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cfepd@yolocounty.org

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Healthy Truth LLC, individually and dba Organic Living Superfoods
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Healthy Truth Performance + Recovery Go Pro Cacao - Lead, Cadmium**
- 2. Healthy Truth Performance + Recovery Go Green Unflavored - Lead**

- 3. Healthy Truth Performance + Recovery Go Red Super Berry - Lead**
- 4. Healthy Truth Performance + Recovery Go Gold Lemon + Ginger - Lead**
- 5. Healthy Truth Raw Maca Root Powder - Lead**

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

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since May 3, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

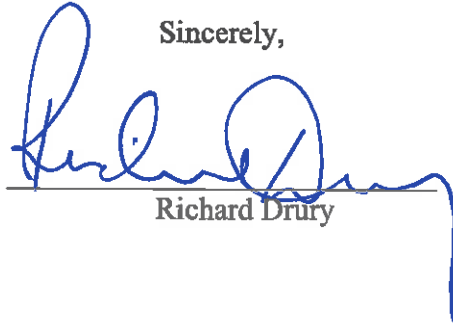
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

May 3, 2022

Page 5

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth and their Registered Agents for Service of Process only)

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

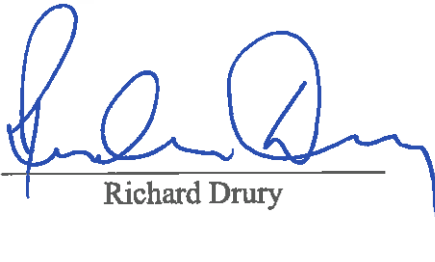
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 3, 2022


Richard Drury

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 3, 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 CEO or President
Healthy Truth LLC, individually and dba
Organic Living Superfoods; Organic Living
Superfoods, LLC, individually and dba Healthy Truth
87 West St
Walpole, MA 02081

Edmund L. Poli III
(Registered Agent for Healthy Truth LLC, individually
and dba Organic Living Superfoods)
87 West St
Walpole, MA 02081

On May 3, 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
Oakland, CA 94612-0550

On May 3, 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** 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
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 3, 2022

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

May 3, 2022

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On May 3, 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 3, 2022, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

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May 10, 2022

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VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Healthy Truth LLC, individually and dba Organic Living Superfoods
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Healthy Truth Raw Spirulina Powder - Lead**
- 2. Healthy Truth Caffeine-Free Golden Milk Pumpkin Spice Latte - Lead**

- 3. Healthy Truth Raw Cacao Powder – Lead, Cadmium**
- 4. Healthy Truth Organic Living Superfoods Crunch Time Sprouted Banana Protein Crunch – Cadmium, Mercury**

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

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

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium and/or mercury. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium and/or mercury. Each of these ongoing violations has occurred on every day since May 10, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

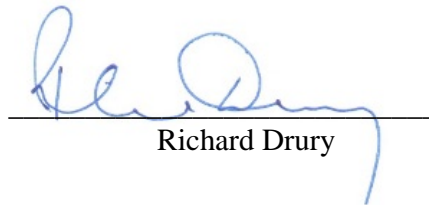
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

May 10, 2022

Page 5

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth and their Registered Agents for Service of Process only)

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

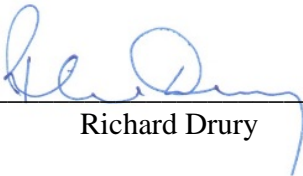
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 10, 2022


Richard Drury

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 10, 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 CEO or President
Healthy Truth LLC, individually and dba
Organic Living Superfoods; Organic Living
Superfoods, LLC, individually and dba Healthy Truth
87 West St
Walpole, MA 02081

Edmund L. Poli III
(Registered Agent for Healthy Truth LLC, individually
and dba Organic Living Superfoods)
87 West St
Walpole, MA 02081

On May 10, 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
Oakland, CA 94612-0550

On May 10, 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** 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:

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

May 10, 2022

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

May 10, 2022

Page 9

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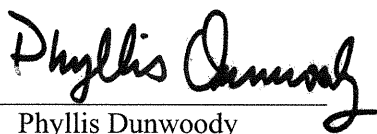
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On May 10, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto 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 10, 2022, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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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



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Superfoods, LLC, individually and dba Healthy Truth
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Edmund L. Poli III
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VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Healthy Truth LLC, individually and dba Organic Living Superfoods
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Healthy Truth Caffeine-Free Golden Milk Cinnamon Spice Latte - Lead**
- 2. Healthy Truth Performance + Recovery Go Pro Unflavored - Lead**

- 3. Healthy Truth Performance + Recovery Go Pre-Workout Sweet Beet - Lead**
- 4. Healthy Truth Performance + Recovery Plant Based Protein Bar Cacao – Lead, Cadmium**
- 5. Healthy Truth Performance + Recovery Plant Based Protein Bar Mixed Berry - Cadmium**

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

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since May 17, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

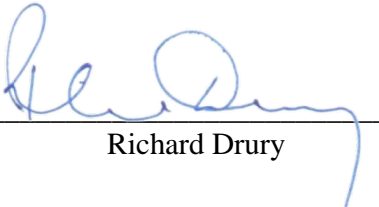
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 17, 2022

Page 5

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth and their Registered Agents for Service of Process only)

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

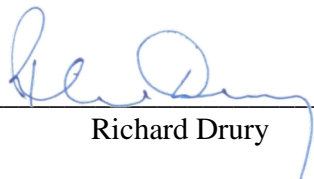
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 17, 2022


Richard Drury

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 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 CEO or President
Healthy Truth LLC, individually and dba
Organic Living Superfoods; Organic Living
Superfoods, LLC, individually and dba Healthy Truth
87 West St
Walpole, MA 02081

Edmund L. Poli III
(Registered Agent for Healthy Truth LLC, individually
and dba Organic Living Superfoods)
87 West St
Walpole, MA 02081

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
Oakland, CA 94612-0550

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** 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:

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

May 17, 2022

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 17, 2022
Page 9

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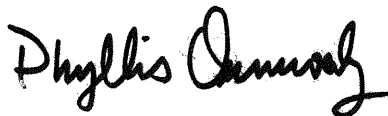
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On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto 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

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Los Angeles City
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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



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VIA CERTIFIED MAIL

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July 6, 2022

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VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Healthy Truth LLC, individually and dba Organic Living Superfoods
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Organic Living Superfoods Life by Chocolate Superfruit Mix - Lead**

- 2. Organic Living Superfoods Life by Chocolate Dark Chocolate Coconut Chips – Lead, Cadmium**
- 3. Organic Living Superfoods Crunch Time Sprouted Ceylon Cinnamon Crunch - Lead**
- 4. Organic Living Superfoods Crunch Time Sprouted Blueberry Hemp Protein Crunch - Cadmium**

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

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since July 6, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

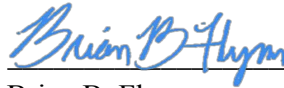
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

July 6, 2022

Page 5

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Brian B. Flynn

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth 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 Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth

I, Brian B. Flynn, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 6, 2022



Brian B. Flynn

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 July 6, 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 CEO or President
Healthy Truth LLC, individually and dba
Organic Living Superfoods; Organic Living
Superfoods, LLC, individually and dba Healthy Truth
87 West St
Walpole, MA 02081

Edmund L. Poli III
(Registered Agent for Healthy Truth LLC, individually
and dba Organic Living Superfoods)
87 West St
Walpole, MA 02081

On July 6, 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
Oakland, CA 94612-0550

On July 6, 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** 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:

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

July 6, 2022

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

July 6, 2022

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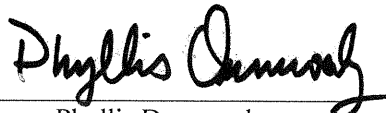
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On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto 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 July 6, 2022, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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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.