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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 **GT's LIVING FOODS, LLC and DOES 1-
27 100**

28 **Defendants.**

CASE NO. 23CV037863

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 10, 2023

Trial Date: None set

1. INTRODUCTION

1.1 On July 10, 2023, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against GT’s Living Foods, LLC (“GT’s Living Foods”) and Does 1-100.
3 In this action, ERC alleges that a number of products manufactured, distributed, or sold by
4 GT’s Living Foods contain lead and/or mercury, chemicals listed under Proposition 65 as
5 carcinogens and/or reproductive toxins, and expose consumers to these chemicals at a level
6 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
7 “Covered Product” or collectively as “Covered Products”) are: (1) GT’s Synergy Raw
8 Kombucha Multi-Green (lead, mercury), (2) GT’s Synergy Raw Kombucha Gingerade
9 (mercury), (3) GT’s Synergy Raw Kombucha Guava Goddess (mercury), (4) GT’s Synergy
10 Raw Kombucha Pomegranate Power (lead, mercury), (5) GT’s Synergy Raw Kombucha
11 Sacred Life (lead, mercury), (6) GT’s Synergy Raw Kombucha Tangerine Dream (lead,
12 mercury), and (7) GT’s Synergy Raw Kombucha Mystic Mango (mercury).

13 **1.2** ERC and GT’s Living Foods are hereinafter referred to individually as a “Party”
14 or collectively as the “Parties.”

15 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
16 causes, helping safeguard the public from health hazards by reducing the use and misuse of
17 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
18 and encouraging corporate responsibility.

19 **1.4** For purposes of this Consent Judgment, the Parties agree that GT’s Living Foods
20 is a business entity that has employed ten or more persons at all times relevant to this action, and
21 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. GT’s
22 Living Foods manufactures, distributes, and/or sells the Covered Products.

23 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
24 dated March 16, 2023 and April 4, 2023 that were served on the California Attorney General,
25 other public enforcers, and GT’s Living Foods (“Notices”). True and correct copies of the 60-
26 Day Notices dated March 16, 2023 and April 4, 2023 are attached hereto as **Exhibits A and B**
27 and each is incorporated herein by reference. More than 60 days have passed since the Notices
28 were served on the Attorney General, public enforcers, and GT’s Living Foods and no

1 designated governmental entity has filed a Complaint against GT's Living Foods with regard to
2 the Covered Products or the alleged violations.

3 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
4 California consumers exposes them to lead and/or mercury without first receiving clear and
5 reasonable warnings from GT's Living Foods, which is in violation of California Health and
6 Safety Code section 25249.6. GT's Living Foods denies all material allegations contained in
7 the Notices and Complaint.

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

15 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
16 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
17 any current or future legal proceeding unrelated to these proceedings.

18 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
19 as a Judgment by this Court.

20 **2. JURISDICTION AND VENUE**

21 For purposes of this Consent Judgment and any further court action that may become
22 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
23 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
24 over GT's Living Foods as to the acts alleged in the Complaint, that venue is proper in Alameda
25 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
26 resolution of all claims up through and including the Effective Date that were or could have been
27 asserted in this action based on the facts alleged in the Notices and Complaint.

28 ///

1 **3. INJUNCTIVE RELIEF, TESTING AND WARNINGS**

2 **3.1** Beginning on the Effective Date, GT’s Living Foods shall be permanently
3 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
4 California,” or directly selling in the State of California, any Covered Product that exposes a
5 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
6 “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day as
7 determined by the testing described in Section 3.4 below, unless it meets the warning
8 requirements under Section 3.2. If the testing described in Section 3.4 below indicates that a
9 warning should be required, GT’s Living Foods will have the opportunity to prove that the
10 lead or mercury detected in the product is naturally occurring with evidence that meets the
11 requirements of 27 CCR section 25501 (2023).

12 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
13 of California” shall mean to directly ship a Covered Product into California for sale in
14 California or to sell a Covered Product to a distributor that GT’s Living Foods knows or has
15 reason to know will sell the Covered Product in California.

16 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
17 Level” shall be measured in micrograms, and shall be calculated using the following formula:
18 micrograms of lead per gram of product, multiplied by grams of product per serving of the
19 product (using the largest serving size appearing on the product label), multiplied by servings
20 of the product per day (using the largest number of recommended daily servings appearing on
21 the label), which equals micrograms of lead exposure per day. If the label contains no
22 recommended daily servings, then the number of recommended daily servings shall be one.

23 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
24 Level” shall be measured in micrograms, and shall be calculated using the following formula:
25 micrograms of mercury per gram of product, multiplied by grams of product serving of the
26 product (using the largest serving size appearing on the product label), multiplied by servings
27 of the product per day (using the largest number of recommended daily servings appearing on
28 the label), which equals micrograms of lead exposure per day. If the label contains no

1 recommended daily servings, then the number of recommended daily servings shall be one.

2 **3.2 Clear and Reasonable Warnings**

3 If GT's Living Foods is required to provide a warning pursuant to Section 3.1, one of the
4 following warnings must be utilized ("Warning"):

5 **OPTION 1:**

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

9 **OPTION 2:**

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

11 GT's Living Foods shall use the phrase "cancer and" in the Warning if GT's Living Foods
12 has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead
13 as determined pursuant to the testing methodology set forth in Section 3.4 or if GT's Living Foods
14 has actual knowledge that another Proposition 65 chemical is present at a level that requires a
15 cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there
16 is lead, mercury, or both chemicals present in each of the Covered Products, but if GT's Living
17 Foods has actual knowledge that there is a chemical present at a level that requires a cancer
18 warning, the chemical requiring use of the phrase "cancer and" in the Warning shall always be
19 identified. For the Option 2 Warning, a symbol consisting of a black exclamation point in a
20 yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the
21 Warning, in a size no smaller than the height of the word "**WARNING.**" Where the sign, label or
22 shelf tag for the product is not printed using the color yellow, the symbol may be printed in black
23 and white.

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

1 the checkout page are subject to the Warning. In no event shall any internet or website
2 Warning be contained in or made through a link.

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

9 GT’s Living Foods must display the above Warning with such conspicuousness, as
10 compared with other words, statements or designs on the label, or on its website, if applicable, to
11 render the Warning likely to be read and understood by an ordinary individual under customary
12 conditions of purchase or use of the product.

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

16 **3.3 Conforming Covered Products**

17 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
18 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Mercury Exposure
19 Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure
20 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
21 3.4, and that is not known by GT’s Living Foods to contain other chemicals that violate
22 Proposition 65’s safe harbor thresholds.

23 **3.4 Testing and Quality Control Methodology**

24 **3.4.1** Beginning within one year of the Effective Date, GT’s Living Foods shall
25 arrange for lead and mercury testing of the Covered Products at least once a year for a minimum
26 of five consecutive years by arranging for testing of three (3) randomly selected samples of each
27 of the Covered Products, in the form intended for sale to the end-user, which GT’s Living Foods
28 intends to sell or is manufacturing for sale in California, directly selling to a consumer in

1 California or “Distributing into the State of California.” If tests conducted pursuant to this
2 Section demonstrate that no Warning is required for a Covered Product during each of five
3 consecutive years, then the testing requirements of this Section will no longer be required as to
4 that Covered Product. However, if during or after the five-year testing period, GT’s Living
5 Foods reformulates any of the Covered Products, GT’s Living Foods shall test that Covered
6 Product annually for at least four (4) consecutive years after such change is made.

7 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
8 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three
9 (3) randomly selected samples of the Covered Products will be controlling.

10 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
11 laboratory method that complies with the performance and quality control factors appropriate
12 for the method used, including limit of detection and limit of quantification, sensitivity,
13 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
14 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
15 mg/kg... In the alternative GT’s Living Foods may conduct testing pursuant to the AOAC
16 993.14 method or any other method for lead and mercury testing that is accepted for First
17 Action by the AOAC in the future so long as the limit of quantification for such testing method
18 is less than or equal to .005 mg/kg. ERC is not required to use the same testing method chosen
19 by GT’s Living Foods as each Party may select a qualifying laboratory and testing method of
20 its choice to conduct the testing pursuant to Section 3.4.

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

25 **3.4.5** Nothing in this Consent Judgment shall limit GT’s Living Foods’ ability
26 to conduct, or require that others conduct, additional testing of the Covered Products, including
27 the raw materials used in their manufacture.

28 **3.4.6** Within thirty (30) days of ERC’s written request, GT’s Living Foods

1 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. GT's Living Foods shall
2 retain all test results and documentation for a period of five years from the date of each test.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, additional settlement
5 payments, attorney's fees, and costs, GT's Living Foods shall make a total payment of
6 \$95,000.00 ("Total Settlement Amount") to ERC within 15 days of the Effective Date ("Due
7 Date"). GT's Living Foods shall make this payment by wire transfer to ERC's account, for
8 which ERC will give GT's Living Foods the necessary account information. The Total
9 Settlement Amount shall be apportioned as follows:

10 **4.2** \$21,250.00 shall be considered a civil penalty pursuant to California Health and
11 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$15,937.50) of the civil penalty to
12 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
13 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
14 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,312.50) of the civil penalty.

15 **4.3** \$2,801.45 shall be distributed to ERC as reimbursement to ERC for reasonable
16 costs incurred in bringing this action.

17 **4.4** \$15,750.00 shall be distributed to ERC as an Additional Settlement Payment
18 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
19 and 3204. ERC will utilize the ASP for activities that address the same public harm as
20 allegedly caused by Defendant in this matter. These activities are detailed below and support
21 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
22 dietary supplement products in California. ERC's activities have had, and will continue to
23 have, a direct and primary effect within the State of California because California consumers
24 will be benefitted by the reduction and/or elimination of exposure to lead and/or mercury in
25 dietary supplements and/or by providing clear and reasonable warnings to California
26 consumers prior to ingestion of the products.

27 Based on a review of past years' actual budgets, ERC is providing the following list of
28 activities ERC engages in to protect California consumers through Proposition 65 citizen

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

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

24 **4.5** \$16,300.00 shall be distributed to Aqua Terra Aeris Law Group as
25 reimbursement of ERC's attorney fees, while \$38,898.55 shall be distributed to ERC for its in-
26 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
27 costs.

28 **4.6** In the event that GT's Living Foods fails to remit the Total Settlement Amount

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

9 **5. MODIFICATION OF CONSENT JUDGMENT**

10 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
11 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
12 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
13 modified consent judgment.

14 **5.2** If GT's Living Foods seeks to modify this Consent Judgment under Section 5.1,
15 then GT's Living Foods must provide written notice to ERC of its intent ("Notice of Intent").
16 If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent,
17 then ERC must provide written notice to GT's Living Foods within thirty (30) days of receiving
18 the Notice of Intent. If ERC notifies GT's Living Foods in a timely manner of ERC's intent to
19 meet and confer, then the Parties shall meet and confer in good faith as required in this Section.
20 The Parties shall meet in person or via telephone within thirty (30) days of ERC's notification
21 of its intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
22 proposed modification, ERC shall provide to GT's Living Foods a written basis for its position.
23 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
24 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
25 to different deadlines for the meet-and-confer period.

26 **5.3** In the event that GT's Living Foods initiates or otherwise requests a
27 modification under Section 5.1, and the meet and confer process leads to a joint motion or joint
28 application for a modification of the Consent Judgment, GT's Living Foods shall reimburse

1 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process
2 and filing and arguing the motion or application.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
4 **JUDGMENT**

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
6 terminate this Consent Judgment.

7 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
8 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
9 inform GT's Living Foods in a reasonably prompt manner of its test results, including
10 information sufficient to permit GT's Living Foods to identify the Covered Products at issue.
11 GT's Living Foods shall, within thirty (30) days following such notice, provide ERC with
12 testing information, from an independent third-party laboratory meeting the requirements of
13 Sections 3.4.3 and 3.4.4, demonstrating GT's Living Foods' compliance with the Consent
14 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
15 legal action.

16 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

24 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
25 behalf of itself and in the public interest, and GT's Living Foods and its respective officers,
26 directors, shareholders, employees, agents, parent companies, predecessors, subsidiaries,
27 divisions, suppliers, franchisees, licensees, customers (not including private label customers of
28 GT's Living Foods), distributors, wholesalers, retailers, and all other upstream and downstream

1 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
2 assigns of any of them (collectively, “Released Parties”), of any violation of Proposition 65
3 based on failure to warn about alleged exposure to lead and mercury contained in Covered
4 Products that were sold or distributed by GT’s Living Foods prior to the Effective Date.

5 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
6 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
7 and/or mercury from the Covered Products as set forth in the Notices of Violation. ERC, on
8 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
9 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
10 expenses asserted, or that could have been asserted from the handling, use, or consumption of
11 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
12 regulations arising from the failure to provide Proposition 65 warnings on the Covered
13 Products regarding lead and/or mercury up to and including the Effective Date.

14 **8.3** ERC on its own behalf only, and GT’s Living Foods on its own behalf only,
15 further waive and release any and all claims they may have against each other for all actions or
16 statements made or undertaken in the course of seeking or opposing enforcement of
17 Proposition 65 in connection with the Notices and Complaint up through and including the
18 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s
19 right to seek to enforce the terms of this Consent Judgment.

20 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
21 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
22 discovered. ERC on behalf of itself only, and GT’s Living Foods on behalf of itself only,
23 acknowledge that this Consent Judgment is expressly intended to cover and include all such
24 claims up through and including the Effective Date, including all rights of action therefore.
25 ERC and GT’s Living Foods acknowledge that the claims released in Sections 8.2 and 8.3
26 above may include unknown claims, and nevertheless waive California Civil Code section
27 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
2 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
3 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
4 PARTY.

5 ERC on behalf of itself only, and GT's Living Foods on behalf of itself only, acknowledge and
6 understand the significance and consequences of this specific waiver of California Civil Code
7 section 1542.

8 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
9 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
10 exposures to lead and/or mercury in the Covered Products as set forth in the Notices and
11 Complaint.

12 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
13 environmental exposures arising under Proposition 65, nor shall it apply to any of GT's Living
14 Foods' products other than the Covered Products.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **10. GOVERNING LAW**

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

22 **11. PROVISION OF NOTICE**

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

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

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

1 With a copy to:
2 Matthew C. Maclear
3 Anthony M. Barnes
4 Aqua Terra Aeris Law Group
5 4030 Martin Luther King Jr. Way
6 Oakland, CA 94609
7 Telephone: (415) 568-5200
8 Email: mcm@atalawgroup.com

9 **FOR GT's LIVING FOODS, LLC:**

10 GT Dave
11 Chief Executive Officer
12 GT's Living Foods, LLC
13 4646 Hampton St.
14 Vernon, California 90058
15 Email: gt@drinkgts.com

16 With a copy to:
17 Dawn Sestito
18 R. Collins Kilgore
19 O'Melveny & Myers LLP
20 400 South Hope Street
21 Los Angeles, California 90071-2899
22 Telephone: (213) 430-6000
23 Email: dsestito@omm.com
24 ckilgore@omm.com

25 **12. COURT APPROVAL**

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

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

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

13. EXECUTION AND COUNTERPARTS

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

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

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

18 **16.1** ERC may, by motion or order to show cause before the Superior Court of
19 Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior
20 to bringing any such motion, ERC shall provide GT's Living Foods with written notice setting
21 forth the basis for the alleged violation. The Parties shall then meet and confer regarding the
22 basis for ERC's anticipated motion or application in an attempt to resolve it informally. Should
23 such attempts at meeting and conferring fail, ERC may file its enforcement motion. In any
24 action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
25 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
26 To the extent the failure to comply with the Consent Judgment constitutes a violation of
27 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
28 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are

1 provided by law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

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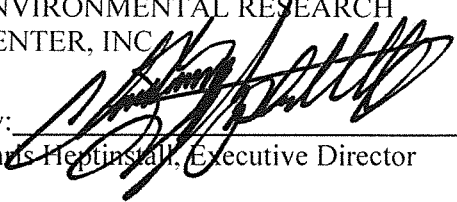
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IT IS SO STIPULATED:

Dated: 9/8/, 2023

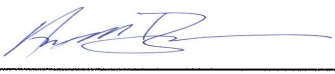
ENVIRONMENTAL RESEARCH
CENTER, INC

By: _____
Chris Heptinstall, Executive Director

Dated: 9/08, 2023

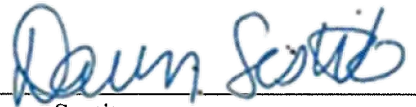
GT's LIVING FOODS, LLC

By: GT DAVE
Its: CEO

APPROVED AS TO FORM:

Dated: September 9, 2023

AQUA TERRA AERIS LAW GROUP
By: 
Matthew C. Maclear
Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

Dated: September 11, 2023

O'MELVENY & MYERS LLP
By: 
Dawn Sestito
R. Collins Kilgore
Attorneys for Defendant GT's Living
Foods, LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2023 _____
Judge of the Superior Court

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EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
917-371-8293

March 16, 2023

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

GT's Living Foods, LLC



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
Page 2

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

1. **GT's Synergy Raw Kombucha Multi-Green – Lead, Mercury**
2. **GT's Synergy Raw Kombucha Gingerade - Mercury**
3. **GT's Synergy Raw Kombucha Guava Goddess - Mercury**
4. **GT's Synergy Raw Kombucha Pomegranate Power – Lead, 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.

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.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 16, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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



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Page 3

in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, looped initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to GT's Living Foods, LLC and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by GT's Living Foods, LLC

I, Matthew Maclear, declare:

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

2. I am 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 Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

A handwritten signature in black ink that reads "Matthew Maclear".

Dated: March 16, 2023

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
Page 5

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On March 16, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
GT’s Living Foods, LLC
4646 Hampton St
Vernon, CA 90058

CT Corporation System
(Registered Agent for GT’s Living Foods, LLC)
330 N Brand Blvd, Ste 700
Glendale, CA 91203

Current President or CEO
GT’s Living Foods, LLC
PO Box 2352
Beverly Hills, CA 90213

The Corporation Trust Company
(Registered Agent for GT’s Living Foods, LLC)
1209 N. Orange St.
Wilmington, DE 19801

Current President or CEO
GT’s Living Foods, LLC
4415 Bandini Blvd
Vernon, CA 90058

CT Corporation System
(Registered Agent for GT’s Living Foods, LLC)
28 Liberty St
New York, NY 10005

On March 16, 2023, 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
Page 6

On March 16, 2023, 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

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

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

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

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

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

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

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

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

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@da.ocgov.com

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

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

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 7

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



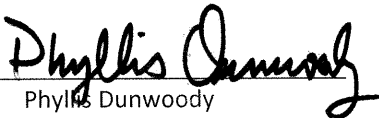
Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

March 16, 2023

Page 8

On March 16, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on March 16, 2023, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
Page 9

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637		

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
917-371-8293

April 4, 2023

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

GT's Living Foods, LLC



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 4, 2023
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Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **GT's Synergy Raw Kombucha Sacred Life – Lead, Mercury**
2. **GT's Synergy Raw Kombucha Tangerine Dream – Lead, Mercury**
3. **GT's Synergy Raw Kombucha Mystic Mango - 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.

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.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 4, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 4, 2023
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ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to GT's Living Foods, LLC and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by GT's Living Foods, LLC

I, Matthew Maclear, declare:

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

2. I am 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 Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

A handwritten signature in black ink that reads "Matthew Maclear".

Dated: April 4, 2023

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 4, 2023
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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 April 4, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
GT’s Living Foods, LLC
4646 Hampton St
Vernon, CA 90058

CT Corporation System
(Registered Agent for GT’s Living Foods, LLC)
330 N Brand Blvd, Ste 700
Glendale, CA 91203

Current President or CEO
GT’s Living Foods, LLC
PO Box 2352
Beverly Hills, CA 90213

The Corporation Trust Company
(Registered Agent for GT’s Living Foods, LLC)
1209 N. Orange St.
Wilmington, DE 19801

Current President or CEO
GT’s Living Foods, LLC
4415 Bandini Blvd
Vernon, CA 90058

CT Corporation System
(Registered Agent for GT’s Living Foods, LLC)
28 Liberty St
New York, NY 10005

On April 4, 2023, 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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On April 4, 2023, 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

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

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

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

Stacey Grassini, Deputy District Attorney
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sgrassini@contracostada.org

Allison Haley, District Attorney
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Napa, CA 94559
CEPD@countyofnapa.org

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

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

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168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Todd Spitzer, District Attorney
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Santa Ana, CA 92703
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Michelle Latimer, Program Coordinator
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Susanville, CA 96130
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Morgan Briggs Gire, District Attorney
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Prop65@placer.ca.gov

Walter W. Wall, District Attorney
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Mariposa, CA 95338
mcda@mariposacounty.org

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



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

April 4, 2023

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

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

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

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

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

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

Tori Verber Salazar, District Attorney
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Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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Prop65DA@santacruzcounty.us

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

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Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
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Ventura, CA 93009
daspecialops@ventura.org

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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On April 4, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on April 4, 2023, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody", is written over a horizontal line.

Phyllis Dunwoody



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

April 4, 2023

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Service List

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

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

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

District Attorney, Colusa County
310 6th St
Colusa, CA 95932

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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