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

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

**Plaintiff,**

**vs.**

**KOS NATURALS, LLC; KOS, INC;  
EXCELSIOR NUTRITION INC,  
individually and dba 4EXCELSIOR; and  
DOES 1-100**

**Defendants.**

**CASE NO. RG20075140**

**AMENDED [PROPOSED]  
STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 28, 2020  
Trial Date: March 8, 2027

(Includes Consolidated Cases filed under  
Case Numbers 24CV069852,  
24CV070738, and 24CV070740)

1     **1.     INTRODUCTION**

2             **1.1**     On September 28, 2020, Plaintiff Environmental Research Center, Inc.  
3     (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this  
4     action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant  
5     to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition  
6     65”), against KOS Naturals, LLC and Otimo, LLC, individually and dba KOS Naturals and  
7     Does 1-100. A First Amended Complaint was filed against the same defendants on October 19,  
8     2020, and on June 2, 2021, a Second Amended Complaint was filed. On February 7, 2023,  
9     ERC filed a Third Amended Complaint, adding KOS, Inc. as a defendant, and ERC thereafter  
10    filed its Fourth Amended Complaint on July 28, 2023. On March 24, 2025, ERC filed a Fifth  
11    Amended Complaint, adding Excelsior Nutrition Inc., individually and dba 4Excelsior  
12    (“4Excelsior”), as a defendant. The Fifth Amended Complaint is the operative Complaint and  
13    is hereinafter referred to as “Complaint.”

14            **1.2**     On April 2, 2024, ERC, as a private enforcer and in the public interest, filed a  
15    Complaint for Injunctive and Declaratory Relief and Civil Penalties in the Alameda County  
16    Superior Court pursuant to the provisions of Proposition 65 against Target Brands, Inc., Target  
17    Corporation, and Does 1-100 (“Target Case”). The Case Number for the Target Case is  
18    24CV069852.

19            **1.3**     On April 8, 2024, ERC, as a private enforcer and in the public interest, filed a  
20    Complaint for Injunctive and Declaratory Relief and Civil Penalties in the Alameda County  
21    Superior Court pursuant to the provisions of Proposition 65 against CVS Pharmacy, Inc., CVS  
22    Health Corporation, and Does 1-100 (“CVS Case”). The Case Number for the CVS Case is  
23    24CV070740.

24            **1.4**     On April 8, 2024, ERC, as a private enforcer and in the public interest, filed a  
25    Complaint for Injunctive and Declaratory Relief and Civil Penalties in the Alameda County  
26    Superior Court pursuant to the provisions of Proposition 65 against Vitacost.com, Inc. and  
27    Does 1-100 (“Vitacost Case”). The Case Number for the Vitacost Case is 24CV070738.

28            **1.5**     The Target Case, CVS Case, and Vitacost Case may hereinafter be referred to

collectively as the “Retailer Cases.” On January 6, 2025, Judge Somnath Raj Chatterjee, in Department 21 of the Alameda County Superior Court, issued an Order consolidating the Retailer Cases with the original case filed under Case Number RG20075140 and designating Case Number RG20075140 as the lead case (which may also be referred to as the “4Excelsior Case”).

## **1.6 Products At Issue**

**1.6.1** In the Complaint, ERC alleges that a number of products manufactured, distributed, or sold by 4Excelsior contain lead and/or mercury and/or cadmium, chemicals listed under Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning. 4Excelsior disputes these allegations and expressly denies that any Covered Product required a warning under Proposition 65. The products at issue in the Complaint (referred to hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are: (1) KOS Nature-Powered Organic Spirulina Powder (lead), (2) \*KOS Nature-Powered Organic Fo-Ti Powder (lead), (3) \*KOS Nature-Powered Organic Plant Protein Chocolate Chip Mint Flavor (lead, cadmium), (4) KOS Nature-Powered Organic Maca Root Powder (lead), (5) KOS Nature-Powered Organic Greens Blend (lead), (6) KOS Nature-Powered Show Me The Greens! Green Apple Sorbet Flavored (lead), (7) \*KOS Nature-Powered Organic Flax Seed Powder (lead), (8) \*KOS Nature-Powered Organic Chlorella Powder (lead), (9) KOS Nature-Powered Organic Ashwagandha Powder (lead), (10) \*KOS Nature-Powered Organic Rhodiola Root Powder (lead), (11) \*KOS Nature-Powered Organic Matcha Powder (lead), (12) KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavor (lead, cadmium), (13) \*KOS Nature-Powered Organic Cinnamon Bark Powder (lead), (14) KOS Nature-Powered Organic Plant Protein Vanilla Flavor (lead), (15) KOS Nature-Powered Organic Plant Protein Chocolate Flavor (lead, cadmium), (16) KOS Nature-Powered Organic Plant Protein Salted Caramel Coffee Flavor (lead), (17) KOS Nature-Powered Organic Plant Protein with Blue Spirulina & Immunity Blend Blueberry Muffin Flavor (lead), (18) KOS Nature-Powered Kiss Your Blues Away Berry Coconut Cooler Flavored (lead), (19) \*KOS Nature-Powered Holy Cacao! Cinnamon Cocoa Flavored (lead), (20) \*KOS Nature-Powered At

Ease, Soldier! (lead), (21) \*KOS Nature-Powered Rhodiola Root (lead), (22) \*KOS Nature-Powered Matcha Tea (lead), (23) KOS Nature-Powered A Whole Latte Gold Golden Mylk Blend Gingerbread Chai Flavored (lead, mercury), (24) KOS Nature-Powered Sippin' On Shroomboom Mushroom Coffee Blend Dark Chocolate Mocha Flavored (lead) (25) \*KOS Nature-Powered Immune Defense With EpiCor (lead), and (26) \*KOS Nature-Powered Organic Plant Protein Vanilla Bavarian Cream Flavored (mercury). The Covered Products that are marked with an asterisk (“\*”) in the preceding list of Covered Products are not currently being manufactured, marketed, distributed, or sold by or for 4Excelsior. In the event any such product is reintroduced in the future, it shall remain a Covered Product under this Consent Judgment and be subject to the release and the injunctive terms herein.

**1.6.2** In the Target Case, ERC alleges that two products distributed and/or sold by Target contain lead, a chemical listed under Proposition 65 as a carcinogen and/or reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (which are included in the Consent Judgment as Covered Products pursuant to Section 1.6.1) are: (1) KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Flavored and (2) KOS Nature-Powered Organic Superfood Plant Protein Powder with Blue Spirulina Blueberry Muffin Flavored.

**1.6.3** In the Vitacost Case, ERC alleges that six products distributed and/or sold by Vitacost contain lead, a chemical listed under Proposition 65 as a carcinogen and/or reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (which are included in the Consent Judgment as Covered Products pursuant to Section 1.6.1) are: (1) KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Flavored, (2) KOS Nature-Powered Organic Superfood Plant Protein Powder Vanilla Flavored, (3) KOS Nature-Powered Organic Superfood Plant Protein Powder Salted Caramel Coffee Flavored, (4) KOS Nature-Powered Organic Superfood Plant Protein Powder Unflavored & Unsweetened, (5) KOS Nature-Powered Organic Superfood Plant Protein Powder Blueberry Muffin Flavored, and (6) KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Peanut Butter Flavored.

1           **1.6.4** In the CVS Case, ERC alleges that two products distributed and/or sold by  
2 CVS contain lead, a chemical listed under Proposition 65 as a carcinogen and/or reproductive  
3 toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning.  
4 These products (which are included in the Consent Judgment as Covered Products pursuant to  
5 Section 1.6.1) are: (1) KOS Nature-Powered Organic Plant Protein Chocolate Flavored and (2)  
6 KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavored.

7           **1.7** Each of the Covered Products may also be referred to as “Lead Covered  
8 Product(s).” Product numbers (3), (12), and (15) may also be referred to as the “Cadmium  
9 Covered Product(s).” Product numbers (23) and (26) may also be referred to as the “Mercury  
10 Covered Product(s).”

## 11           **1.8 Parties To The Consent Judgment**

12           **1.8.1** ERC, 4Excelsior, Target Brands, Inc. and Target Corporation (together  
13 referred to as “Target”), Vitacost.com, Inc. (“Vitacost”), and CVS Pharmacy, Inc. and CVS  
14 Health Corporation (together referred to as “CVS”) may also hereinafter be referred to  
15 individually as a “Party” or collectively as the “Parties.”

16           **1.8.2** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among  
17 other causes, helping safeguard the public from health hazards by reducing the use and misuse of  
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
19 and encouraging corporate responsibility.

20           **1.8.3** For purposes of this Amended [Proposed] Stipulated Consent Judgment  
21 (“Consent Judgment”), the Parties agree that 4Excelsior is a business entity that has employed  
22 ten or more persons at all times relevant to this action and qualifies as a “person in the course of  
23 doing business” within the meaning of Proposition 65. 4Excelsior manufactures, markets,  
24 distributes, and/or sells the Covered Products.

## 25           **1.9 Notices of Violation**

26           **1.9.1** The Complaint is based, in part, on allegations contained in ERC’s  
27 Notices of Violation dated October 15, 2024 that were served on the California Attorney  
28 General, other public enforcers, and 4Excelsior (“Notices”). True and correct copies of the 60-

Day Notices dated October 15, 2024 are attached collectively hereto as **Exhibit A** and are incorporated herein by reference. More than 60 days have passed since the Notices were served on the Attorney General, public enforcers, and 4Excelsior and no designated governmental entity has filed a Complaint against 4Excelsior with regard to the Covered Products or the alleged violations.

**1.9.2** The Target Case is based, in part, on allegations contained in ERC's Notices of Violation dated January 5, 2024 and January 19, 2024, which are attached collectively hereto as **Exhibit B** and are incorporated herein by reference.

**1.9.3** The Vitacost Case is based, in part, on allegations contained in ERC's Notice of Violation dated January 26, 2024, which is attached hereto as **Exhibit C** and is incorporated herein by reference.

**1.9.4** The CVS Case is based, in part, on allegations contained in ERC's Notice of Violation dated December 14, 2023, which is attached hereto as **Exhibit D** and is incorporated herein by reference.

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

**1.11** The Notices of Violation and the complaints at issue in the Target Case, the Vitacost Case, and the CVS Case each allege that use of the Covered Products by California consumers exposes them to lead without first receiving clear and reasonable warnings from Target, Vitacost, or CVS, as applicable, which is in violation of California Health and Safety Code section 25249.6. Target, Vitacost, and CVS each deny all material allegations made against them in the Target Case, the Vitacost Case, or the CVS Case.

**1.12** The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Compliance with this Consent Judgment shall not constitute or be construed as an admission

1 by any of the Parties or by any of their respective officers, directors, shareholders, employees,  
2 agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,  
3 distributors, wholesalers, or retailers of any fact, issue of law, or violation of law. This Consent  
4 Judgment is entered into solely for purposes of resolving the disputed allegations of the  
5 Notices, the Complaint, the Target Case, the Vitacost Case, and the CVS Case, and shall not be  
6 admissible in any other proceeding, unrelated to this case, as evidence of liability, fault,  
7 wrongdoing, or concession by 4Excelsior, Target, CVS, or Vitacost.

8 **1.13** Except as expressly set forth herein, nothing in this Consent Judgment shall  
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
10 any current or future legal proceeding unrelated to these proceedings. The Parties expressly  
11 reserve all rights not expressly waived herein.

12 **1.14** The Effective Date of this Consent Judgment is the date on which it is entered  
13 as a Judgment by this Court.

14 **1.15 Bar Against Future Claims.** ERC, acting solely on its own behalf and not in the  
15 public interest, represents and agrees that neither it nor any of its officers, directors, agents,  
16 employees, assigns, or successors will initiate, support, or encourage any additional enforcement  
17 action against any Released Party as defined in this Consent Judgment, including but not limited  
18 to 4Excelsior, Target, Vitacost, or CVS under Proposition 65 based on alleged exposures to the  
19 Covered Products occurring prior to the Effective Date. Nothing in this Section 1.12 shall  
20 prohibit ERC, including its officers, directors, agents, employees, assigns, or successors, from  
21 future enforcement of this Consent Judgment, including but not limited to enforcement relating  
22 to future violations of Proposition 65 with respect to the Covered Products, against 4Excelsior.

23 **1.16 Authority to Bind.** Each signatory to this Consent Judgment represents and  
24 warrants that they are authorized to execute this agreement and to bind the entity or entities on  
25 whose behalf they sign.

26 **1.17 Motion to Seal.** In the event any party to this Consent Judgment seeks to file any  
27 materials related to this Consent Judgment (but not including the Consent Judgment) under seal,  
28 ERC agrees that it will not oppose or object to such a motion to seal. The Parties acknowledge

1 that the Office of the California Attorney General requires submission of the final Consent  
2 Judgment for public posting; however, nothing herein shall prevent 4Excelsior from seeking a  
3 protective order or other relief to maintain confidentiality over specific materials or information  
4 submitted to the Court, but not including this Consent Judgment, in connection with this matter.  
5 Each Party shall bear its own costs and attorneys' fees associated with any such motion.

## 6 **2. JURISDICTION AND VENUE**

7 For purposes of this Consent Judgment and any further court action that may become  
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
9 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
10 over 4Excelsior as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
11 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
12 all claims involving the Parties up through and including the Effective Date that were or could  
13 have been asserted in this action based on the facts alleged in the Notices and Complaint and in  
14 the Retailer Cases.

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

16 **3.1** Beginning on the Effective Date, 4Excelsior shall be permanently enjoined from  
17 manufacturing for sale in the State of California, "Distributing into the State of California," or  
18 directly selling in the State of California, (a) any Lead Covered Product that exposes a person  
19 to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day (the current  
20 Maximum Allowable Dose Level ("MADL") for lead as established by Office of  
21 Environmental Health Hazard Assessment ("OEHHA")) and/or (b) any Mercury Covered  
22 Product that exposes a person to a "Daily Mercury Exposure Level" of more than 0.3  
23 micrograms of mercury per day and/or (c) any Cadmium Covered Product that exposes a  
24 person to a "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per  
25 day, all pursuant to the testing methodologies and levels of quantification set forth in Section 3  
26 unless such Covered Product meets the warning requirements under Section 3.2. In the event  
27 OEHHA establishes an MADL for lead that is different from the current MADL of 0.5  
28 micrograms of lead per day, and that is applicable to the Lead Covered Products, 4Excelsior



1 shall be entitled seek a modification of this Consent Judgment pursuant to Section 5, and such  
2 modification shall not be unreasonably withheld by ERC. Likewise, in the event OEHHA  
3 establishes an MADL for mercury that is different from the Daily Mercury Exposure Level of  
4 0.3 micrograms of mercury per day, and that is applicable to the Mercury Covered Products,  
5 4Excelsior shall be entitled seek a modification of this Consent Judgment pursuant to Section  
6 5, and such modification shall not be unreasonably withheld by ERC.

7 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
8 of California” shall mean to directly ship a Covered Product into California for sale in  
9 California or to sell a Covered Product to a distributor that 4Excelsior knows or has reason to  
10 know will sell the Covered Product in California. Additionally, as used in this Consent  
11 Judgment, the term MADL (Maximum Allowable Dose Level) shall mean the daily exposure  
12 to a listed reproductive toxicant that is at or below a level requiring no Proposition 65  
13 reproductive-harm warning.

14 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
17 product (using the largest serving size appearing on the product label), multiplied by servings  
18 of the product per day (using the largest number of recommended daily servings appearing on  
19 the label), which equals micrograms of lead exposure per day. If the label contains no  
20 recommended daily servings, then the number of recommended daily servings shall be one.  
21 Nothing herein shall require testing of any product not manufactured or sold in California after  
22 the Effective Date.

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 per 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 mercury exposure per day. If the label contains no

recommended daily servings, then the number of recommended daily servings shall be one. Nothing herein shall require testing of any Covered Product not manufactured or sold in California after the Effective Date.

**3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one. Nothing herein shall require testing of any Covered Product not manufactured or sold in California after the Effective Date.

## **3.2 Clear and Reasonable Warnings**

### **3.2.1 Warning Requirements**


If 4Excelsior is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized (“Warning”):

#### **OPTION 1:**

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

OR

#### **OPTION 2:**

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

OR

#### **OPTION 3:**

**WARNING:** Risk of [cancer from exposure to [lead] and] reproductive harm from exposure to [lead] [cadmium] [mercury]. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

1 OR

2 **OPTION 4:**

3 **WARNING:** Can expose you to [[lead] a carcinogen and] [lead] [cadmium] [mercury] a  
4 reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

5  
6 The Warning shall begin with the word “**WARNING**” in all capital letters and bold print  
7 as required by 27 CCR § 25607.2(a)(1) (2025). Use of “**CA WARNING**” or “**CALIFORNIA**  
8 **WARNING**” in all capital letters and bold print in place of the word “**WARNING**” is optional  
9 and not mandatory. 4Excelsior shall use the phrase “cancer and” in the Option 1 and Option 2  
10 Warnings or “cancer from exposure to [lead] and” in the Option 3 Warning or “[lead] a  
11 carcinogen and” in the Option 4 Warning (each phrase referred to individually as a “Cancer  
12 Phrase”) only if it knows that the “Daily Lead Exposure Level” is greater than 15 micrograms of  
13 lead as determined pursuant to the quality control methodology set forth in Section 3.4, or if it  
14 knows that another Proposition 65 chemical is present at a level that requires a cancer warning.  
15 As identified in the brackets, the warning shall appropriately reflect whether there is lead (for the  
16 Lead Covered Products), cadmium (for the Cadmium Covered Products only), or mercury (for the  
17 Mercury Covered Products only), but if there is a chemical present at a level that requires a cancer  
18 warning, the chemical requiring use of the Cancer Phrase in the Warning shall always be  
19 identified. For avoidance of doubt, mere analytical detection of a listed carcinogen at or above the  
20 method LOQ/MDL, without an exposure exceedance as referenced above, shall not trigger  
21 inclusion of the Cancer Phrase.

22 The Option 2 Warning may only be used until January 1, 2028. Any Covered Product that is  
23 manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of  
24 when the product is sold to a consumer. For the Option 2 Warning, a symbol consisting of a black  
25 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left  
26 of the text of the Warning, in a size no smaller than the height of the word “**WARNING.**” Where  
27 the sign, label or shelf tag for the Covered Product is not printed using the color yellow, the symbol  
28 may be printed in black and white.

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

4 Except as may be outlined in this Consent Judgment, which defines and controls the duties  
5 to warn, in no event shall 4Excelsior be required to implement a Warning system that exceeds then  
6 current “safe harbor” regulations under Proposition 65. Any final modifications to applicable law or  
7 regulations applicable to the Covered Products and this Consent Judgment shall be applied on a  
8 prospective basis only, and 4Excelsior reserves the right to seek modification of this Consent  
9 Judgment pursuant to Section 5 in order to conform its labeling and internet warnings according to  
10 any such final modification.

### 11 **3.2.2 Compliance by Providing the Warning on the Product Label**

12 The Warning shall be securely affixed to or printed upon the label of each Covered  
13 Product manufactured or labeled by 4Excelsior, and it must be clearly visible and set off from  
14 surrounding information in a manner that reasonably draws the consumer’s attention and enclosed  
15 in a box.

16 The Warning shall be at least the same size as the largest of any other health or safety  
17 warnings also appearing on the website or on the label and in no event less than six (6) point type.  
18 No statements intended to or likely to have the effect of diminishing the impact of the Warning on  
19 the average lay person shall accompany the Warning. Further no statements may accompany the  
20 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
21 less harmful effect of the listed chemical.

22 4Excelsior must display the above Warning with such conspicuousness, as compared with  
23 other words, statements or designs on the label, or on its website, if applicable, to render the  
24 Warning likely to be read and understood by an ordinary individual under customary conditions of  
25 purchase or use of the product. Where a sign or label used to provide the Warning for a Covered  
26 Product includes consumer information about the Covered Product in a language other than English,  
27 the Warning must also be provided in that language in addition to English.

28 ///

### 3.2.3 Compliance by Providing the Warning to a Proposition 65 Reseller

In lieu of providing the Warning on the label of the Covered Product pursuant to Section 3.2.2, 4Excelsior may comply with its warning obligation by providing a written notice directly to (a) the authorized agent for the business to which 4Excelsior is selling or transferring the Covered Product or (b) the authorized agent for a retail seller, so long as the business to which 4Excelsior is providing the notice is a “person in the course of doing business” pursuant to Health and Safety Code § 25249.11(b) (2025) and subject to Health and Safety Code § 25249.6 (2025). The business to which 4Excelsior provides the notice, pursuant to (a) or (b) of this paragraph, shall hereafter be referred to as “Proposition 65 Reseller.”<sup>1</sup> If a Proposition 65 Reseller has not designated an authorized agent, 4Excelsior may serve the notice on the legal agent for service of process for the Proposition 65 Reseller. The written notice shall:

- (1) State that the Covered Product may result in an exposure to one or more listed chemicals and provide the name of such chemical(s);
- (2) Include the exact name or description of the Covered Product or specific identifying information for the Covered Product such as a Universal Product Code or other identifying designation;
- (3) Include all necessary warning materials, such as labels, labeling, shelf signs or tags, that are in compliance with the warning requirements of this Consent Judgment and the warning language required by this Consent Judgment for Covered Products sold on the internet; and
- (4) Be renewed annually during the period in which the Covered Product is sold in California by the Proposition 65 Reseller.

If 4Excelsior is complying with Proposition 65 pursuant to this Section 3.2.3 by providing a written notice to a Proposition 65 Reseller, either by providing the written notice to the authorized agent for the Proposition 65 Reseller or to the legal agent for service of process for the

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<sup>1</sup> The term Proposition 65 Reseller shall include Target, Vitacost, and CVS, all of whom shall be obligated and agree to provide a Warning for applicable Covered Products in accordance with the provisions of Section 3.2.3 only if, and to the extent that, 4Excelsior provides each such retailer with written notice in compliance with Section 3.2.3.

1 Proposition 65 Reseller, confirmation of receipt of the notice and any renewed notices must be  
2 received electronically or in writing from the authorized agent or legal agent for service of process  
3 to which 4Excelsior sent the notice. If 4Excelsior is unable to obtain such confirmation of receipt,  
4 4Excelsior cannot rely on this Section 3.2.3 or 27 CCR § 25600.2 in lieu of providing the  
5 Warning on the label of the Covered Products.

6 The Proposition 65 Reseller shall be responsible for the placement and maintenance of  
7 warning materials, including Warnings for Covered Products sold over the internet, that the  
8 Proposition 65 Reseller receives pursuant to this Section 3.2.3. Other than as required by this  
9 Section 3.2.3, in no event shall 4Excelsior be obligated to advise, instruct, interpret, or otherwise  
10 explain the content, form, or method of providing the Warning to any Proposition 65 Reseller.  
11 Each such Proposition 65 Reseller remains independently responsible for its own compliance with  
12 Proposition 65 and related regulations.

#### 13 **3.2.4 Compliance by Providing the Warning on the Internet**

14 For any Covered Product sold by 4Excelsior over the internet to consumers in California,  
15 the Warning shall appear on the checkout page when a California delivery address is indicated for  
16 any purchase of any Covered Product. An asterisk or other identifying method must be utilized to  
17 identify which products on the checkout page are subject to the Warning. The Warning may be  
18 provided with a conspicuous hyperlink stating “**WARNING**”, or the words “**CA WARNING**” or  
19 “**CALIFORNIA WARNING**”, in all capital and bold letters so long as the hyperlink goes  
20 directly to a page prominently displaying the Warning without content that detracts from the  
21 Warning. A Warning is not prominently displayed if the purchaser must search for it in the  
22 general content of the website.

23 The Warning shall be at least the same size as the largest of any other health or safety  
24 warnings also appearing on the website, and in no event shall an Option 2 or Option 3 Warning be  
25 in a type size smaller than 6-point type. No statements intended to or likely to have the effect of  
26 diminishing the impact of the Warning on the average lay person shall accompany the internet  
27 Warning. Further no statements may accompany the internet Warning that state or imply that the  
28 source of the listed chemical has an impact on or results in a less harmful effect of the listed

chemical.

4Excelsior must display the Warning with such conspicuousness, as compared with other words, statements or designs on its website, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product. Where the website through which the Warning is provided for a Covered Product includes consumer information about the Covered Product in a language other than English, the Warning must also be provided in that language in addition to English.

The obligation to provide a warning for sales of Covered Products over the internet is in addition to 4Excelsior's obligation to provide the Warning on the label of the Covered Product.

### **3.3 Conforming Covered Products**

A Conforming Lead Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the exposure methodology set forth in Section 3.1.2 and the quality control methodology described in Section 3.4, and that is not known by 4Excelsior to contain other chemicals that violate Proposition 65's safe harbor thresholds. A Conforming Mercury Covered Product is a Mercury Covered Product for which the "Daily Mercury Exposure Level" is no greater than 0.3 micrograms of mercury per day as determined by the exposure methodology set forth in Section 3.1.3 and the quality control methodology described in Section 3.4, and that is not known by 4Excelsior to contain other chemicals that violate Proposition 65's safe harbor thresholds. A Conforming Cadmium Covered Product is a Cadmium Covered Product for which the "Daily Cadmium Exposure Level" is no greater than 4.1 micrograms of cadmium per day as determined by the exposure methodology set forth in Section 3.1.4 and the quality control methodology described in Section 3.4, and that is not known by 4Excelsior to contain other chemicals that violation Proposition 65's safe harbor thresholds. Conforming Lead Covered Products, Conforming Cadmium Covered Products, and Conforming Mercury Covered Products may also be individually referred to herein as a Conforming Covered Product or collectively referred to herein as Conforming Covered Products.

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

**3.4.1** Beginning within one year of the Effective Date, 4Excelsior shall

1 arrange for lead, cadmium, and mercury testing of the Covered Products at least once a year for  
2 a minimum of two (2) consecutive years by arranging for testing of three (3) randomly selected  
3 samples of each of the Covered Products, in the form intended for sale to the end-user, which  
4 4Excelsior intends to sell or is manufacturing for sale in California, directly selling to a  
5 consumer in California or “Distributing into the State of California” (the Original Testing).  
6 Covered Products not manufactured for sale in California intended to be sold in California, or  
7 distributed into or within California shall not be subject to testing obligations of this Section  
8 3.4.1. If tests conducted pursuant to this Section 3.4.1 demonstrate that no Warning is required  
9 for a Covered Product during each of two consecutive years, then the testing requirements of  
10 this Section will no longer be required as to that Covered Product. However, if during or after  
11 the two-year testing period, 4Excelsior changes ingredient suppliers for any of the Covered  
12 Products and/or reformulates any of the Covered Products, 4Excelsior shall test that Covered  
13 Product annually for at least one (1) consecutive year after such change is made; however, in  
14 no event shall the total period of testing be less than two years.

15           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the  
16 and/or the “Daily Mercury Exposure Level” and/or the “Daily Cadmium Exposure Level,” the  
17 highest lead and/or mercury and/or cadmium detection result of the three (3) randomly selected  
18 samples of the Covered Products will be controlling. If, during a required testing year, the  
19 highest result for a Covered Product pursuant to the Original Testing as described in Section  
20 3.4.1 reflects an exposure in excess of the thresholds specified in Section 3.1 for lead, mercury,  
21 or cadmium, as applicable, 4Excelsior shall have the right to retest three (3) randomly selected  
22 samples from different lots (“Retest”), and the highest lead, mercury, or cadmium detection  
23 result from the three samples tested during the Retest shall be used as controlling for  
24 calculating the Daily Lead Exposure Level and/or the Daily Mercury Exposure Level and/or  
25 the Daily Cadmium Exposure Level, as applicable, for that Covered Product for purposes of  
26 the Consent Judgment. If 4Excelsior chooses to conduct a Retest, then it shall notify ERC in  
27 writing that it has done so and shall provide the tests from the Original Testing and the Retest  
28 to ERC as required pursuant to Section 3.4.6 or Section 6.2. Additionally, if 4Excelsior



1 chooses to conduct a Retest, it shall comply with Sections 3.1 and 3.2 with respect to any lot  
2 from which the Original Testing sample that exceeded the threshold specified in Section 3.1  
3 was obtained. This means that if any sample tested in the Original Testing had a Daily Lead  
4 Exposure Level greater than 0.5 micrograms of lead per day and/or a Daily Mercury Exposure  
5 Level greater than 0.3 micrograms of mercury per day and/or a Daily Cadmium Exposure  
6 Level greater than 4.1 micrograms of cadmium per day, all as determined by the exposure  
7 methodology set forth in Section 3.1.2, then 4Excelsior must comply with Sections 3.1 and 3.2  
8 before selling or distributing Covered Products from that sample's lot to California consumers  
9 or retailers or distributors who sell the Covered Products to consumers in California.  
10 4Excelsior shall not be permitted to conduct a Retest on a Covered Product for any year in  
11 which multiple samples from the Original Testing reflect an exposure in excess of the  
12 thresholds specified in Section 3.1. 4Excelsior shall be permitted one Retest per Covered  
13 Product for each of lead, mercury, and cadmium as outlined in this Section, during each year  
14 that it performs testing. If any sample in the Retest reflects an exposure in excess of the  
15 thresholds specified in Section 3.1, 4Excelsior shall comply with Sections 3.1 and 3.2 as to that  
16 Covered Product. The results of any Retest shall not be considered in determining whether  
17 4Excelsior's testing obligations have ceased as set forth in Section 3.4.1.

18 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
19 laboratory method that complies with the performance and quality control factors appropriate  
20 for the method used, including limit of detection and limit of quantification, sensitivity,  
21 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
22 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005  
23 mg/kg for lead and mercury and cadmium.

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

28 **3.4.5** Nothing in this Consent Judgment shall limit 4Excelsior's ability to

1 conduct, or require that others conduct, additional testing of the Covered Products, including  
2 the raw materials used in their manufacture.

3           **3.4.6** Within thirty (30) days of ERC’s written request, 4Excelsior shall  
4 deliver lab reports obtained pursuant to Section 3.4 to ERC. 4Excelsior shall retain all test  
5 results and documentation for a period of two (2) years from the date of each test. ERC may  
6 request no more than one report per Covered Product per calendar year.

7           **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to  
8 any Covered Product for which 4Excelsior has provided the Warning specified in Section 3.2  
9 continuously and uninterrupted after the Effective Date; however, in the event 4Excelsior  
10 ceases to provide the Warning specified in Section 3.2, 4Excelsior may only do so after it has  
11 tested such Covered Product, and 4Excelsior shall be required to comply with the testing  
12 requirements of Section 3.4 prior to ceasing to provide the Warning, unless 4Excelsior can  
13 show to the satisfaction of ERC that the cessation in providing the Warning was a temporary  
14 error that was resolved when discovered.

15           **3.4.8** 4Excelsior shall not be obligated to test any Covered Product pursuant to  
16 this Section 3.4 during any period of time that such Covered Product is discontinued and not  
17 being manufactured, sold, or distributed into or within the State of California (collectively  
18 referred to in this Section 3.4.8 as “California Sales Practices”). However, if 4Excelsior  
19 resumes California Sales Practices with respect to any such Covered Product, 4Excelsior shall  
20 provide a Warning on the product continually and uninterrupted immediately upon engaging in  
21 California Sales Practices. If 4Excelsior does not provide a Warning on any Covered Product  
22 for which it resumes California Sales Practices, 4Excelsior shall be required to begin testing  
23 the Covered Product in accordance with Section 3.4 before resuming California Sales Practices  
24 and shall begin, continue or resume complying with the testing requirements of Section 3.4  
25 with respect to the Covered Product immediately after the date that 4Excelsior resumes  
26 California Sales Practices with respect to the Covered Product. 4Excelsior shall not include  
27 the period of time the Covered Product was discontinued and not being manufactured, sold, or  
28 distributed into or within the State of California in calculating the two years for which testing

1 is required by this Section 3.4. For purposes of this Section 3.4.8, the term “discontinued” shall  
2 mean that a decision has been made that a Covered Product will no longer be manufactured,  
3 distributed or sold at some point in time.

4 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC  
5 from obtaining and relying upon its own testing for purposes of enforcement, so long as such  
6 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent  
7 Judgment is intended by any Party to set a precedent for the level of lead, mercury, cadmium, or  
8 other chemicals that are permissible in consumer products under Proposition 65. The Parties  
9 expressly agree that nothing in Section 3 or elsewhere in this Consent Judgment shall be  
10 construed as requiring reformulation. Warnings provided in compliance with this Consent  
11 Judgment shall serve as a complete and sufficient method of compliance.

12 **3.6 Exclusion of Pre-Effective Date Products**

13 **3.6.1** So long as 4Excelsior can provide adequate documentation, if requested in  
14 writing by ERC, Covered Products manufactured and not in the possession or under the control  
15 of 4Excelsior on or prior to the Effective Date (“Pre-Effective Date Products”) shall be expressly  
16 exempt from the injunctive terms set forth in Section 3, including but not limited to the warning  
17 and testing requirements, and are instead permitted to be sold as is to California consumers and  
18 are expressly released by Section 8. Such Pre-Effective Date Products may be sold or otherwise  
19 distributed to California consumers in their current form and condition, without modification,  
20 and their sale, distribution, or use shall not be deemed a violation of this Consent Judgment. This  
21 exemption for such Pre-Effective Date Products shall apply with full force and effect to  
22 4Excelsior and all Released Parties, and such Pre-Effective Date Products are expressly included  
23 within the release of claims set forth in Section 8.

24 **3.6.2** For purposes of clarity: A Covered Product shall be presumed to qualify  
25 as a Pre-Effective Date Product if 4Excelsior produces a dated invoice, batch record, or other  
26 reasonable documentation showing a manufacturing date on or before the Effective Date as well  
27 as a dated shipping record, delivery receipt, or other reasonable documentation showing that the  
28 purported Pre-Effective Date Product was no longer in the possession of or under the control of

4Excelsior as of the Effective Date. In the event ERC disputes whether a product qualifies as a Pre-Effective Date Product, and 4Excelsior has produced documentation pursuant to the preceding sentence of this Section 3.6.2, the burden shall shift to ERC to demonstrate with particularized evidence that the Covered Product was either manufactured after the Effective Date or remained in the possession or control of 4Excelsior as of the Effective Date.

**3.6.3** For the avoidance of doubt, the Parties further agree that:

(a) such Pre-Effective Date Products are not “Covered Products” for purposes of enforcement under this Consent Judgment;

(b) 4Excelsior shall have no obligation to recall, relabel, test, repackage, or otherwise alter or modify any such Pre-Effective Date Products; and

(c) the continued sale, resale, or distribution of any such Pre-Effective Date Products in the State of California shall not constitute a breach of this Consent Judgment or give rise to any liability or claim for enforcement by ERC or any third party acting under this agreement.

**3.6.4** This Section 3.6 is material inducement and essential to the consideration exchanged herein, and the Parties agree that this section shall be interpreted and enforced in favor of limiting 4Excelsior’s liability for legacy inventory manufactured and introduced into the stream of commerce prior to the Effective Date.

#### **4. SETTLEMENT PAYMENTS**

##### **4.1**

(a) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the Target Case, Target shall make a total payment of \$20,000.00 (“Target Total Settlement Amount”) to ERC within 14 days of the Effective Date (“Target Due Date”).

(b) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the Vitacost Case, Vitacost shall make a total payment of \$20,000.00 (“Vitacost Total Settlement Amount”) to ERC within 14 days of the Effective Date (“Vitacost Due Date”).

(c) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the CVS Case, CVS shall make a combined total payment of \$20,000.00 (“CVS Total Settlement

Amount”) to ERC within 14 days of the Effective Date (“CVS Due Date”).

(d) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the 4Excelsior Case, 4Excelsior shall make a total payment of \$450,000.00 (“4Excelsior Total Settlement Amount”) to ERC in ten periodic payments (the “4Excelsior Periodic Payments”) according to the following payment schedule (“4Excelsior Due Dates”):

- Payment 1 -- \$45,000.00 within 30 days of the date that this Consent Judgment is executed by the Parties (“Execution Date”) (the first 4Excelsior Due Date)
- Payment 2 -- \$45,000.00 within 60 days of the Execution Date (the second 4Excelsior Due Date)
- Payment 3 -- \$45,000.00 within 90 days of the Execution Date (the third 4Excelsior Due Date)
- Payment 4 -- \$45,000.00 within 120 days of the Execution Date (the fourth 4Excelsior Due Date)
- Payment 5 -- \$45,000.00 within 150 days of the Execution Date (the fifth 4Excelsior Due Date)
- Payment 6 -- \$45,000.00 within 180 days of the Execution Date (the sixth 4Excelsior Due Date)
- Payment 7 -- \$45,000.00 within 210 days of the Execution Date (the seventh 4Excelsior Due Date)
- Payment 8 -- \$45,000.00 within 240 days of the Execution Date (the eighth 4Excelsior Due Date)
- Payment 9 -- \$45,000.00 within 270 days of the Execution Date (the ninth 4Excelsior Due Date)
- Payment 10 -- \$45,000.00 within 300 days of the Execution Date (the tenth 4Excelsior Due Date)

4Excelsior, Target, Vitacost, and CVS shall each make their payments by wire transfer to ERC’s account, for which ERC will give 4Excelsior, Target, Vitacost, and CVS the

1 necessary account information. Any party may prepay all or any portion of the amounts due at  
2 any time without premium, penalty, interest, make-whole, yield maintenance, lost-profits, or  
3 other charge. For any 4Excelsior Periodic Payments made by 4Excelsior to ERC prior to the  
4 Effective Date, ERC shall hold these payments in its bank account and shall not distribute the  
5 funds as outlined below until after the Effective Date. The Target Total Settlement Amount,  
6 Vitacost Total Settlement Amount, CVS Total Settlement Amount, and 4Excelsior Total  
7 Settlement Amount shall be apportioned as follows:

8 **4.2 Civil Penalties:** Civil penalties shall apportioned as follows:

9 (a) \$45,000.00 shall be considered a civil penalty attributable to the 4Excelsior  
10 Case pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit  
11 75% (\$33,750.00) of the civil penalty to the Office of Environmental Health Hazard  
12 Assessment (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund  
13 in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the  
14 remaining 25% (\$11,250.00) of the civil penalty.

15 (b) \$1,000.00 shall be considered a civil penalty attributable to the Target Case  
16 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%  
17 (\$750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment  
18 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance  
19 with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25%  
20 (\$250.00) of the civil penalty.

21 (c) \$1,000.00 shall be considered a civil penalty attributable to the CVS Case  
22 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%  
23 (\$750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment  
24 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in  
25 accordance with California Health and Safety Code section 25249.12(c). ERC will retain the  
26 remaining 25% (\$250.00) of the civil penalty.

27 (d) \$1,000.00 shall be considered a civil penalty attributable to the Vitacost Case  
28 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%

( \$750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$250.00) of the civil penalty.

**4.3 Costs:** Except as explicitly provided in Sections 4.3 (a) through (d), ERC, 4Excelsior, Target, Vitacost, CVS shall each bear its own costs. The portion of each of the Total Settlement Amounts paid by the Defendants that is attributable to ERC’s costs shall be apportioned as follows:

(a) \$141,384.11 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing the 4Excelsior Case.

(b) \$1,389.02 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing the Target Case.

(c) \$946.68 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing the CVS Case.

(d) \$1,275.93 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing the Vitacost Case.

**Legal Fees:** Except as explicitly provided in Sections 4.4 (a) through (d), ERC, 4Excelsior, Target, Vitacost, CVS shall each bear its own legal fees. The portion of each of the Total Settlement Amounts paid by the Defendants that is attributable to ERC’s legal fees shall be apportioned as follows:

(a) \$263,615.89 shall be distributed to ERC for its in-house legal fees and the fees of its outside counsel attributed to the 4Excelsior Case.

(b) \$17,610.98 shall be distributed to ERC for its in-house legal fees attributed to the Target Case.

(c) \$18,053.32 shall be distributed to ERC for its in-house legal fees attributed to the CVS Case.

(d) \$17,724.07 shall be distributed to ERC for its in-house legal fees attributed to the Vitacost Case.

1           **4.5**     In the event that 4Excelsior fails to remit, in full, any of the 4Excelsior Periodic  
2 Payments owed under Section 4.1 of this Consent Judgment on or before the applicable  
3 4Excelsior Due Date, 4Excelsior shall be deemed to be in material breach of its obligations  
4 under this Consent Judgment. ERC shall provide written notice of the delinquency to  
5 4Excelsior via electronic mail. If 4Excelsior fails to deliver the delinquent payment within five  
6 (5) days from the written notice, the 4Excelsior Total Settlement Amount, less any amounts  
7 previously paid by 4Excelsior pursuant to Section 4.1(d), shall be immediately due and owing  
8 and shall accrue interest at the statutory judgment interest rate provided in the California Code  
9 of Civil Procedure section 685.010, and 4Excelsior shall forfeit any release provisions in  
10 Section 8 that are for the benefit of 4Excelsior and the 4Excelsior Released Parties (as defined  
11 in Section 8.1) until such time as the 4Excelsior Total Settlement Amount is paid in full.  
12 Additionally, 4Excelsior agrees to pay ERC's reasonable attorneys' fees and costs for any  
13 efforts to collect the payment(s) due from 4Excelsior under this Consent Judgment.

14           In the event that Target fails to remit the Target Total Settlement Amount owed under  
15 Section 4.1(a) of this Consent Judgment on or before the Target Due Date, Target shall be  
16 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
17 provide written notice of the delinquency to Target via electronic mail. If Target fails to  
18 deliver the Target Total Settlement Amount within five (5) days from the written notice, the  
19 Target Total Settlement Amount shall accrue interest at the statutory judgment interest rate  
20 provided in the California Code of Civil Procedure section 685.010. Additionally, Target  
21 agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the payment  
22 due from Target under this Consent Judgment.

23           In the event that Vitacost fails to remit the Vitacost Total Settlement Amount owed  
24 under Section 4.1(b) of this Consent Judgment on or before the Vitacost Due Date, Vitacost  
25 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC  
26 shall provide written notice of the delinquency to Vitacost via electronic mail. If Vitacost fails  
27 to deliver the Vitacost Total Settlement Amount within five (5) days from the written notice,  
28 the Vitacost Total Settlement Amount shall accrue interest at the statutory judgment interest



1 rate provided in the California Code of Civil Procedure section 685.010. Additionally,  
2 Vitacost agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the  
3 payment due from Vitacost under this Consent Judgment.

4 In the event that CVS fails to remit the CVS Total Settlement Amount owed under  
5 Section 4.1(c) of this Consent Judgment on or before the CVS Due Date, CVS shall be deemed  
6 to be in material breach of its obligations under this Consent Judgment. ERC shall provide  
7 written notice of the delinquency to CVS via electronic mail. If CVS fails to deliver the CVS  
8 Total Settlement Amount within five (5) days from the written notice, the CVS Total  
9 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the  
10 California Code of Civil Procedure section 685.010. Additionally, CVS agrees to pay ERC's  
11 reasonable attorneys' fees and costs for any efforts to collect the payment due from CVS under  
12 this Consent Judgment.

13 Notwithstanding any provision to the contrary in this Consent Judgment, any failure by  
14 any other party to timely or fully make their settlement payment as required under Section  
15 4.1(a), (b), (c), or (d), as applicable, shall not affect, impair, or limit in any way the release,  
16 discharge, or effect of this Consent Judgment as to any other party that has fulfilled their  
17 settlement payment obligations pursuant to Section 4.1. The releases, discharges, and  
18 protections afforded to a party that has fulfilled its settlement payment obligation under this  
19 Consent Judgment shall remain in full force and effect regardless of any breach or default by  
20 any other party of a settlement payment obligation. For clarity, once a party has satisfied its  
21 payment obligation in full, that party shall be deemed to have fully performed its payment  
22 obligations under this Consent Judgment, and any default, breach, or nonperformance by  
23 another party shall not diminish, impair, or otherwise affect the releases, discharges, or  
24 protections applicable to the performing party.

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

26 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
27 written stipulation of ERC and 4Excelsior and upon entry by the Court of a modified consent  
28 judgment or (ii) by motion of either ERC or 4Excelsior pursuant to Section 5.3, and based

1 upon an agreement to modify the Consent Judgment, and upon entry by the Court of a  
2 modified consent judgment.

3       **5.2** If 4Excelsior seeks to modify this Consent Judgment under Section 5.1, then  
4 4Excelsior must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks  
5 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
6 provide written notice to 4Excelsior within thirty (30) days of receiving the Notice of Intent. If  
7 ERC notifies 4Excelsior in a timely manner of ERC’s intent to meet and confer, then ERC and  
8 4Excelsior shall meet and confer in good faith as required in this Section. ERC and 4Excelsior  
9 shall meet in person, via remote meeting, or by telephone within thirty (30) days of ERC’s  
10 notification of its intent to meet and confer. Within thirty (30) days of such meeting, if ERC  
11 disputes the proposed modification, ERC shall provide to 4Excelsior a written basis for its  
12 position. ERC and 4Excelsior shall continue to meet and confer for an additional thirty (30)  
13 days in an effort to resolve any remaining disputes. Should it become necessary, ERC and  
14 4Excelsior may agree in writing to different deadlines for the meet-and-confer period.

15       **5.3** In the event that 4Excelsior initiates or otherwise requests a modification under  
16 Section 5.1, and the meet and confer process leads to an agreed upon motion or stipulation for  
17 a modification of the Consent Judgment, 4Excelsior shall reimburse ERC its costs and  
18 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and  
19 arguing the motion or application. ERC shall not be reimbursed for attorneys’ fees if ERC  
20 does not incur more than four (4) hours of combined attorney/paralegal time in the meet-and-  
21 confer and motion/stipulation process.

## 22       **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT** 23       **JUDGMENT**

24       **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
25 terminate this Consent Judgment.

26       **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
27 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
28 inform 4Excelsior in a reasonably prompt manner of its test results, including information

1 sufficient to permit 4Excelsior to identify the Covered Products at issue. 4Excelsior shall,  
2 within sixty (60) days following such notice, or such other time period agreed upon in writing  
3 by ERC and 4Excelsior, provide ERC with testing information, from an independent third-  
4 party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating  
5 4Excelsior's compliance with the Consent Judgment. 4Excelsior may also provide a written  
6 response to ERC explaining the steps taken to address any potential non-compliance. ERC  
7 shall not initiate any legal action for enforcement without first complying with the meet-and-  
8 confer process and providing 4Excelsior a meaningful opportunity to cure any alleged non-  
9 compliance.

10 **6.3** In the event that 4Excelsior discovers any isolated instances of non-compliance  
11 with the Consent Judgment, 4Excelsior shall promptly notify ERC and take immediate corrective  
12 actions. 4Excelsior acknowledges its continuous commitment to ensuring compliance with  
13 applicable laws and regulations and this Consent Judgment. In case of any alleged non-  
14 compliance, ERC and 4Excelsior must first engage in good-faith meet-and-confer efforts as  
15 indicated in Section 6.1.

16 **6.4** 4Excelsior retains the right to challenge any test results provided by ERC by  
17 obtaining additional testing from an independent third-party laboratory that meets the applicable  
18 requirements of this Consent Judgment. The cost of such additional testing shall be borne by  
19 4Excelsior, and 4Excelsior shall have the right to present the results as evidence in any  
20 subsequent legal proceeding.

## 21 **7. APPLICATION OF CONSENT JUDGMENT**

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

28 ///

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

2               **8.1**     This Consent Judgment is a full, final, and binding resolution among ERC, on  
3 behalf of itself and in the public interest, and 4Excelsior, KOS Naturals, Inc., KOS, Inc.,  
4 Target Brands, Inc., Target Corporation, Vitacost.com, Inc., CVS Pharmacy, Inc., CVS Health  
5 Corporation, and KOS Nutritionals, LLC, Jiaherb, Inc., and their respective officers, directors,  
6 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
7 franchisees, licensees, customers (not including private label customers), distributors,  
8 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
9 of any Covered Product, and the predecessors, successors, and assigns of any of them  
10 (collectively, “Released Parties”) of all claims for violations of Proposition 65 up to the  
11 Effective Date relating to alleged exposure to lead, mercury, and cadmium from the Covered  
12 Products.

13               **8.2**     ERC, acting in the public interest, releases the Released Parties from any and all  
14 claims for violations of Proposition 65 up to the Effective Date based on exposure to lead from  
15 the Lead Covered Products and/or mercury from the Mercury Covered Product and/or  
16 cadmium from the Cadmium Covered Products as set forth in the Notices of Violation. ERC,  
17 on behalf of itself only, hereby fully releases, remises, acquits, and discharges the Released  
18 Parties from any and all claims, actions, causes of action, suits, demands, liabilities,  
19 obligations, damages, penalties, attorneys’ fees and costs, liabilities, remedies, and expenses of  
20 every kind or nature whatsoever, whether known or unknown, suspected or unsuspected,  
21 asserted or that could have been asserted from the handling, use, or consumption of the  
22 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
23 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
24 lead (for the Lead Covered Products) and/or mercury (for the Mercury Covered Product)  
25 and/or cadmium (for the Cadmium Covered Products). Notwithstanding any limitation in the  
26 scope of claims that may be released that might be construed from Section 8.1, ERC, on behalf  
27 of itself only, hereby further fully releases, remises, acquits, and discharges 4Excelsior, Target  
28 Brands, Inc., Target Corporation, CVS Pharmacy, Inc., and CVS Health Corporation from any

1 and all claims, actions, causes of action, suits, demands, liabilities, obligations, damages,  
2 penalties, attorneys' fees and costs, liabilities, remedies, and expenses of every kind or nature  
3 whatsoever, whether known or unknown, suspected or unsuspected, asserted or that could have  
4 been asserted from the handling, use, or consumption of the Covered Products, as to any  
5 alleged violation of Proposition 65 or its implementing regulations arising from the failure to  
6 provide Proposition 65 warnings on the Covered Products regarding any other chemical listed  
7 under Proposition 65, including without limitation lead, cadmium, mercury, their compounds,  
8 Per- and polyfluoroalkyl substances ("PFAS"), including but not limited to perfluorooctanoic  
9 acid ("PFOA") and perfluorooctane sulfonic acid ("PFOS"), and any of their salts, isomers,  
10 isomeric mixtures, precursors, polymers, byproducts, degradation products, and other  
11 derivatives (collectively, "PFAS and Derivatives"), and any related or derivative claims under  
12 state or local law premised on the same alleged facts (including failure-to-warn, unfair  
13 competition, false advertising, or public-nuisance theories based on alleged failure to provide  
14 Proposition 65 warnings), up to and including the Effective Date. However, after the Effective  
15 Date, Proposition 65 Resellers that do not provide a Warning within a reasonable time, but in  
16 no event more than 60 days, after being instructed or notified by 4Excelsior to do so as  
17 outlined in Section 3.2, are not released from liability for violations of Proposition 65.

18 **8.3** ERC on its own behalf only, waives and releases any and all claims it may have  
19 against and 4Excelsior, Target, Vitacost, and CVS on their own behalf only for all actions or  
20 statements made or undertaken in connection with the Notices and the Complaint, and the  
21 Retailer Cases, up to and including the Effective Date. 4Excelsior, Target, Vitacost, and CVS  
22 on their own behalf only, each waive and release any and all claims they may have against  
23 ERC for all actions or statements made or undertaken in connection with the Notices and the  
24 Complaint and Retailer Cases. Nothing in Section 8 shall affect or limit any Party's right to  
25 seek to enforce the terms of this Consent Judgment that are applicable to that Party.

26 **8.4** Target, Vitacost, and CVS each release any and all claims they may have  
27 against 4Excelsior arising from the Proposition 65 violations alleged by ERC in the Retailer  
28 Cases, including attorney's fees and costs incurred in the Retailer Cases and the Settlement

1 Payment required in Section 4.1.

2       **8.5**     It is possible that other claims not known to the Parties, arising out of the facts  
3 alleged in the Notices and Complaint, or in the Retailer Cases, and relating to the Covered  
4 Products, will develop or be discovered. ERC, 4Excelsior, Target, Vitacost, and CVS each  
5 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown  
6 claims and nevertheless waive California Civil Code section 1542 as to any such unknown  
7 claims. California Civil Code section 1542 reads as follows:

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

14 The releasing Parties under this Section 8.5 acknowledge they may hereafter discover facts  
15 different from or in addition to those now known or believed to be true, but intend this release  
16 to be complete and final with respect to the claims released by them in this Consent Judgment.

17       **8.6**     Compliance with the terms of this Consent Judgment shall be deemed to  
18 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
19 exposures to lead and/or mercury and/or cadmium in the Covered Products as set forth in the  
20 Notices and Complaint. However, after the Effective Date, Proposition 65 Resellers that do  
21 not provide a Warning within a reasonable time, but in no event more than 60 days, after being  
22 instructed or notified by 4Excelsior to do so as outlined in Section 3.2, are not released from  
23 liability for violations of Proposition 65.

24       **8.7**     Nothing in this Consent Judgment is intended to apply to any occupational or  
25 environmental exposures arising under Proposition 65, nor shall it apply to any of 4Excelsior's  
26 products other than the Covered Products. Nothing in this Consent Judgment is intended to  
27 apply to any product identified in the Notices and Complaint other than the Covered Products  
28 listed in this Consent Judgment.

## 29       **9.   SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

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

#### **10. GOVERNING LAW**

The terms and conditions of this Consent Judgment shall be governed by and construed in accordance with the laws of the State of California, without regard to any conflicts of law principles that would result in the application of the laws of another jurisdiction. The Parties expressly agree that California law shall exclusively govern the interpretation, enforcement, and any disputes arising out of or relating to this Consent Judgment.

#### **11. PROVISION OF NOTICE**

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

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

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

With a copy to:

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

##### **FOR EXCELSIOR NUTRITION INC dba 4EXCELSIOR:**

Lin Yisheng  
1206 N Miller Street, Ste D  
Anaheim, CA 92806  
Email: Lin@4Excelsior.com

##### **FOR TARGET BRANDS, INC. and TARGET CORPORATION:**

Jake Vandelist  
1000 Nicollet Mall, TPS-3144  
Minneapolis, MN 55403  
Ph: (612) 696-0184  
Email: Jake.Vandelist@target.com

1 With a copy to:  
2 Jeffrey B. Margulies  
3 Ray Muro  
4 Norton Rose Fulbright US LLP  
5 555 South Flower Street, Forty-First Floor  
6 Los Angeles, California 90071  
7 Ph: (213) 892-9315  
8 Email: jeff.margulies@nortonrosefulbright.com  
9 raymond.muro@nortonrosefulbright.com

7 **FOR VITACOST.COM, INC.:**

8 Steve Prough  
9 Assistant Secretary  
10 Vitacost.Com, Inc.  
11 P.O. Box 54143  
12 Los Angeles CA 90054  
13 Email: steve.prough@ralphs.com

12 With a copy to:  
13 Carol Brophy  
14 Steptoe LLP  
15 One Market Plaza  
16 Steuart Tower, Suite 1070  
17 San Francisco, California 94105  
18 Ph: (415) 365-6700  
19 Email: cbrophy@steptoe.com

17 **FOR CVS PHARMACY, INC. and CVS HEALTH CORPORATION:**

18 Erin A. Moosbrugger  
19 Sr. Legal Counsel—Litigation  
20 1 CVS Dr  
21 Woonsocket, RI 02895  
22 Ph: (937) 654-0920  
23 Email: Erin.Moosbrugger@CVSHealth.com

22 With a copy to:  
23 Alecia E. Cotton  
24 Rogers Joseph O'Donnell, PLC  
25 311 California Street, 10th floor  
26 San Francisco, CA 94104  
27 Ph: (415) 956-2828  
28 Email: [ACotton@rjo.com](mailto:ACotton@rjo.com)

27 **12. COURT APPROVAL**

28 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a



1 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
2 Consent Judgment.

3 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
4 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
5 prior to the hearing on the motion.

6 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
7 void and have no force or effect.

### 8 **13. EXECUTION AND COUNTERPARTS**

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

### 12 **14. DRAFTING**

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

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

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

### 27 **16. ENFORCEMENT**

28 ERC may, by motion or order to show cause before the Superior Court of Alameda

County, enforce the terms and conditions contained in this Consent Judgment. In any action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with the Consent Judgment. To the extent the failure to comply with the Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with Proposition 65 or other laws.

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

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

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

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

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

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

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

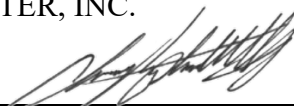
(3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after

the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

**IT IS SO STIPULATED:**

Dated: December 22, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heptinstall, Executive Director

Dated: 12/11/2025, 2025

EXCELSIOR NUTRITION INC,  
individually and dba 4EXCELSIOR

Signed by:  
  
By: Lin Yisheng  
Its: CEO

Dated: \_\_\_\_\_, 2025

TARGET BRANDS, INC. AND TARGET  
CORPORATION

By:  
Their:

Dated: \_\_\_\_\_, 2025

VITACOST.COM, INC.

By:  
Its:

Dated: \_\_\_\_\_, 2025

CVS PHARMACY, INC. AND CVS  
HEALTH CORPORATION

By: Tom Moffatt  
Their: Vice President and Corporate  
Secretary

///

///

the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

Dated: \_\_\_\_\_, 2025

EXCELSIOR NUTRITION INC,  
individually and dba 4EXCELSIOR

\_\_\_\_\_  
By: Lin Yisheng  
Its: CEO

Dated: December 12, 2025

TARGET BRANDS, INC. AND TARGET  
CORPORATION

*Jacob Vandelist*  
\_\_\_\_\_  
By: Jacob Vandelist  
Their: Director Counsel

Dated: \_\_\_\_\_, 2025

VITACOST.COM, INC.

\_\_\_\_\_  
By:  
Its:

Dated: \_\_\_\_\_, 2025

CVS PHARMACY, INC. AND CVS  
HEALTH CORPORATION

\_\_\_\_\_  
By: Tom Moffatt  
Their: Vice President and Corporate  
Secretary

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3 Dated: \_\_\_\_\_, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

6 Dated: \_\_\_\_\_, 2025

EXCELSIOR NUTRITION INC,  
individually and dba 4EXCELSIOR

By: Lin Yisheng  
Its: CEO

12 Dated: \_\_\_\_\_, 2025

TARGET BRANDS, INC. AND TARGET  
CORPORATION

By: \_\_\_\_\_  
Their: \_\_\_\_\_

17 Dated: \_\_\_\_\_, 2025

VITACOST.COM, INC.

By:   
Its: Asst Sec

22 Dated: \_\_\_\_\_, 2025

CVS PHARMACY, INC. AND CVS  
HEALTH CORPORATION

By: Tom Moffatt  
Their: Vice President and Corporate  
Secretary

27 ///

28 ///

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2 **IT IS SO STIPULATED:**

3  
4 Dated: \_\_\_\_\_, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

5  
6 By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

7  
8 Dated: \_\_\_\_\_, 2025

EXCELSIOR NUTRITION INC,  
individually and dba 4EXCELSIOR

9  
10 \_\_\_\_\_  
11 By: Lin Yisheng  
12 Its: CEO

13 Dated: \_\_\_\_\_, 2025

TARGET BRANDS, INC. AND TARGET  
CORPORATION

14  
15 \_\_\_\_\_  
16 By:  
17 Their:

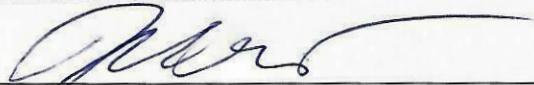
18 Dated: \_\_\_\_\_, 2025

VITACOST.COM, INC.

19  
20 \_\_\_\_\_  
21 By:  
22 Its:

23 Dated: December 22, 2025

CVS PHARMACY, INC. AND CVS  
HEALTH CORPORATION

24   
25 By: Thomas S. Moffatt  
26 Their: Vice President and Corporate  
Secretary/Asst. Corporate Secretary


27 ///

28 ///

1 **APPROVED AS TO FORM:**


2 Dated: December 15, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

4 By:   
5 Charles W. Poss  
6 In-House Counsel

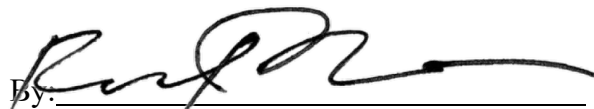
7  
8 Dated: December 11, 2025

MILSTEIN JACKSON FAIRCHILD &  
WADE, LLP

10 By:   
11 Saba Sheida  
12 Attorney for Defendant Excelsior  
13 Nutrition Inc, individually and dba  
14 4Excelsior

15 Dated: December 12, 2025

NORTON ROSE FULBRIGHT US LLP

17 By:   
18 Ray Muro  
19 Attorney for Target Brands, Inc. and  
20 Target Corporation

21 Dated: \_\_\_\_\_, 2025

STEPTOE LLP

23 By: \_\_\_\_\_  
24 Carol Brophy  
25 Attorney for Vitacost.com, Inc.

26 Dated: \_\_\_\_\_, 2025

ROGERS JOSEPH O'DONNELL PLC

28 By: \_\_\_\_\_  
Alecia E. Cotton  
Attorney for CVS Pharmacy, Inc. and  
CVS Health Corporation

1 **APPROVED AS TO FORM:**

2  
3 Dated: \_\_\_\_\_, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

4  
5 By: \_\_\_\_\_  
6 Charles W. Poss  
7 In-House Counsel

8 Dated: \_\_\_\_\_, 2025

MILSTEIN JACKSON FAIRCHILD &  
WADE, LLP

9  
10 By: \_\_\_\_\_  
11 Saba Sheida  
12 Attorney for Defendant Excelsior  
13 Nutrition Inc, individually and dba  
14 4Excelsior


15 Dated: \_\_\_\_\_, 2025

NORTON ROSE FULBRIGHT US LLP

16  
17 By: \_\_\_\_\_  
18 Ray Muro  
19 Attorney for Target Brands, Inc. and  
20 Target Corporation

21 Dated: December 11, 2025

STEPTOE LLP

22 By:  \_\_\_\_\_  
23 Carol Brophy  
24 Attorney for Vitacost.com, Inc.

25 Dated: \_\_\_\_\_, 2025

ROGERS JOSEPH O'DONNELL PLC

26  
27 By: \_\_\_\_\_  
28 Alecia E. Cotton  
Attorney for CVS Pharmacy, Inc. and  
CVS Health Corporation



**APPROVED AS TO FORM:**


Dated: \_\_\_\_\_, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: \_\_\_\_\_  
Charles W. Poss  
In-House Counsel

Dated: December 11, 2025

MILSTEIN JACKSON FAIRCHILD &  
WADE, LLP

By:  \_\_\_\_\_  
Saba Sheida  
Attorney for Defendant Excelsior  
Nutrition Inc, individually and dba  
4Excelsior

Dated: \_\_\_\_\_, 2025

NORTON ROSE FULBRIGHT US LLP

By: \_\_\_\_\_  
Ray Muro  
Attorney for Target Brands, Inc. and  
Target Corporation

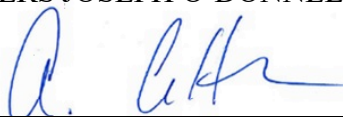
Dated: \_\_\_\_\_, 2025

STEPTOE LLP

By: \_\_\_\_\_  
Carol Brophy  
Attorney for Vitacost.com, Inc.

Dated: December 11, 2025

ROGERS JOSEPH O'DONNELL PLC

By:  \_\_\_\_\_  
Alecia E. Cotton  
Attorney for CVS Pharmacy, Inc. and  
CVS Health Corporation

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court

# **EXHIBIT A**



## **Environmental Research Center**

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

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2020-01039 dated April 23, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**KOS Nature-Powered Organic Spirulina Powder – Lead**

October 15, 2024

Page 2

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 23, 2017\*, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2020-01039 dated April 23, 2020**

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024



Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

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

October 15, 2024

Page 5

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900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

James Clinchard, Assistant District Attorney  
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Placerville, CA 95667  
EDCDAPROP65@edcda.us

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Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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168 North Edwards Street  
Independence, CA 93526  
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Devin Chandler, Program Coordinator  
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2950 Riverside Dr  
Susanville, CA 96130  
dchandler@co.lassen.ca.us

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3501 Civic Center Drive, Suite 145  
San Rafael, CA 94903  
consumer@marincounty.org

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

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Merced, CA 95340  
Prop65@countyofmerced.com

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1200 Aguajito Road  
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SanDiegoDAProp65@sdcda.org

Mark Ankorn, Deputy City Attorney  
San Diego City Attorney  
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CityAttyProp65@sandiego.gov



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

October 15, 2024

Page 6

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Alexandra.grayner@sfgov.org

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Proposition65notices@sanjoseca.gov

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Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

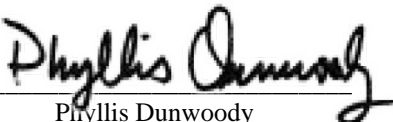
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800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Bud Porter, Supervising Deputy District Attorney  
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70 W Hedding St  
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EPU@da.sccgov.org

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
17300 Hwy 89  
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 6<sup>th</sup> St  
Colusa, CA 95932

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
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Madera, CA 93637

District Attorney, Mendocino  
County  
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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  
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San Bernadino, CA 92415

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

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

District Attorney, Sierra  
County  
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100 Courthouse Square, 2<sup>nd</sup>  
Floor  
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District Attorney, Siskiyou  
County  
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Yreka, CA 96097

District Attorney, Solano  
County  
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Fairfield, CA 94533

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama  
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Red Bluff, CA 96080

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

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

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

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

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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







## **Environmental Research Center**

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

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2020-01240 dated May 21, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

**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. **KOS Nature-Powered Organic Fo-Ti Powder– Lead**
2. **KOS Nature-Powered Organic Plant Protein Chocolate Chip Mint Flavor- Lead, Cadmium**

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

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

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 May 21, 2017\*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

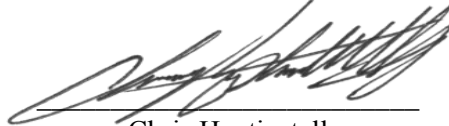
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified 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 expensive and time-consuming litigation.

October 15, 2024

Page 3

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Heptinstall', is written over a horizontal line.

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2020-01240 dated May 21, 2020**

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

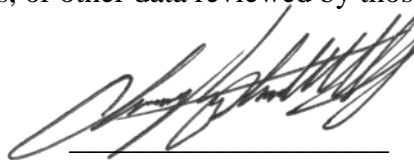
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024



Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

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

October 15, 2024

Page 6

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sgrassini@contracostada.org

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

October 15, 2024

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Proposition65notices@sanjoseca.gov

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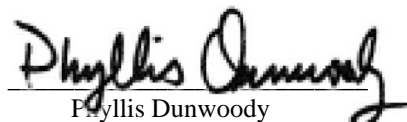
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daspecialops@ventura.org

Bud Porter, Supervising Deputy District Attorney  
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Jeff W. Reisig, District Attorney  
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301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
17300 Hwy 89  
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 6<sup>th</sup> St  
Colusa, CA 95932

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
300 South G Street, Ste 300  
Madera, CA 93637

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

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

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

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

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

District Attorney, San Mateo  
County  
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Redwood City, CA 94063

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

District Attorney, Sierra  
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District Attorney, Siskiyou  
County  
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Fairfield, CA 94533

District Attorney, Stanislaus  
County  
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Modesto, CA 95354

District Attorney, Sutter  
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463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama  
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Red Bluff, CA 96080

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

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

District Attorney, Yuba  
County  
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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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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





## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2020-01629 dated July 2, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

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

- 1. KOS Nature-Powered Organic Maca Root Powder – Lead**
- 2. KOS Nature-Powered Organic Greens Blend – Lead**
- 3. KOS Nature-Powered Show Me The Greens! Green Apple Sorbet Flavored – Lead**
- 4. KOS Nature-Powered Organic Flax Seed Powder – Lead**
- 5. KOS Nature-Powered Organic Chlorella Powder – Lead**
- 6. KOS Nature-Powered Organic Ashwagandha Powder – Lead**

## **7. KOS Nature-Powered Organic Rhodiola Root Powder - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least July 2, 2017\*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Chris Heptinstall  
Executive Director  
Environmental Research Center

### Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2020-01629 dated July 2, 2020**



**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024

  
Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

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1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

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7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
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October 15, 2024

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

October 15, 2024

Page 6

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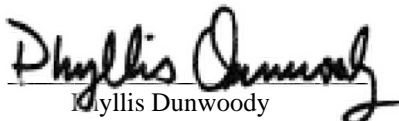
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On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
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P.O. Box 248  
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District Attorney, Amador  
County  
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District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Colusa  
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310 6<sup>th</sup> St  
Colusa, CA 95932

District Attorney, Del Norte  
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Crescent City, CA 95531

District Attorney, Glenn  
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District Attorney, Humboldt  
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El Centro, CA 92243

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Madera, CA 93637

District Attorney, Mendocino  
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Ukiah, CA 95482

District Attorney, Modoc  
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Bernardino County  
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District Attorney, San Mateo  
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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).



## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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





## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2020-01796 dated July 23, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

**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. KOS Nature-Powered Organic Matcha Powder – Lead**
- 2. KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavor – Lead, Cadmium**

3. **KOS Nature-Powered Organic Cinnamon Bark Powder – Lead**
4. **KOS Nature-Powered Organic Plant Protein Vanilla Flavor – Lead**
5. **KOS Nature-Powered Organic Plant Protein Chocolate Flavor – Lead, Cadmium**

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

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

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 July 23, 2017\*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

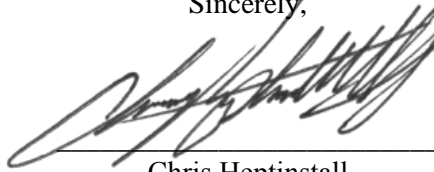
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified 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 expensive and time-consuming litigation.

October 15, 2024

Page 3

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Heptinstall', is written over a horizontal line.

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2020-01796 dated July 23, 2020**

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

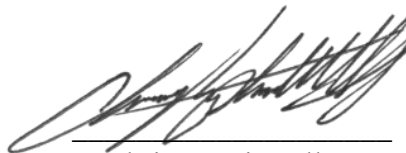
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024



Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 15, 2024

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

October 15, 2024

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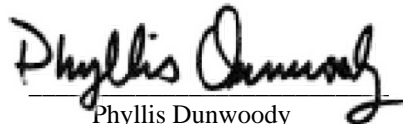
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On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

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County  
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245  
Oroville, CA 95965

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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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







## Environmental Research Center

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

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2021-00587 dated March 9, 2021. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

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

- 1. KOS Nature-Powered Organic Plant Protein Salted Caramel Coffee Flavor– Lead**
- 2. KOS Nature-Powered Organic Plant Protein with Blue Spirulina & Immunity Blend Blueberry Muffin Flavor – Lead**
- 3. KOS Nature-Powered Kiss Your Blues Away Berry Coconut Cooler Flavored– Lead**
- 4. KOS Nature-Powered Holy Cacao! Cinnamon Cocoa Flavored– Lead**

October 15, 2024

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

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

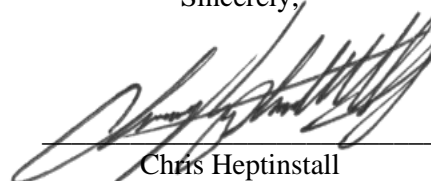
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 9, 2018\*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2021-00587 dated March 9, 2021**

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024



Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

October 15, 2024

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

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Page 6

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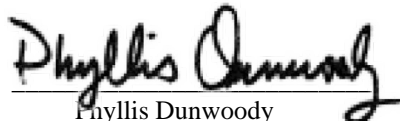
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daspecialops@ventura.org

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cfepd@yolocounty.org

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
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P.O. Box 248  
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District Attorney, Amador  
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District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Colusa  
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District Attorney, Imperial  
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Hall of Justice  
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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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





## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2021-00718 dated March 23, 2021. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

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

- 1. KOS Nature-Powered At Ease, Soldier! – Lead**
- 2. KOS Nature-Powered Rhodiola Root – Lead**
- 3. KOS Nature-Powered Matcha Tea – Lead**

October 15, 2024

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

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

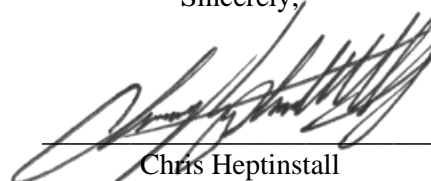
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 23, 2018\*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Chris Heptinstall  
Executive Director

Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2021-00718 dated March 23, 2021**



**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024



Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

October 15, 2024

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CityAttyProp65@sandiego.gov

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

October 15, 2024

Page 6

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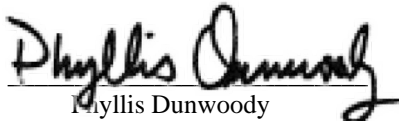
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Bud Porter, Supervising Deputy District Attorney  
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San Jose, CA 95110  
EPU@da.sccgov.org

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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District Attorney, Modoc  
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Bridgeport, CA 93517

District Attorney, San Benito  
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District Attorney, San  
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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).



## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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





## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2022-02786 dated November 18, 2022. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

**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. KOS Nature-Powered A Whole Latte Gold Golden Mylk Blend Gingerbread Chai Flavored – Lead, Mercury**

2. **KOS Nature-Powered Sippin' On Shroomboom Mushroom Coffee Blend Dark Chocolate Mocha Flavored - Lead**
3. **KOS Nature-Powered Immune Defense With EpiCor – Lead**
4. **KOS Nature-Powered Organic Plant Protein Vanilla Bavarian Cream Flavored-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 November 18, 2019\*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until 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.

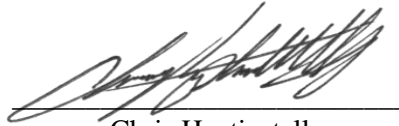
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified 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 expensive and time-consuming litigation.

October 15, 2024

Page 3

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Heptinstall', is written over a horizontal line.

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2022-02786 dated November 18, 2022**

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

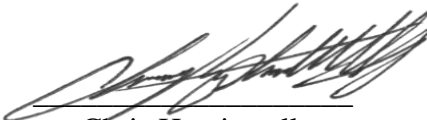
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024



Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

October 15, 2024

Page 6

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CityAttyProp65@sandiego.gov

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

October 15, 2024

Page 7

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DAProp65@co.santa-barbara.ca.us

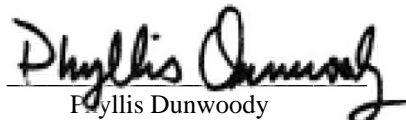
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Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

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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 6<sup>th</sup> St  
Colusa, CA 95932

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
300 South G Street, Ste 300  
Madera, CA 93637

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

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

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

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

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

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

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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







## Environmental Research Center

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

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2023-01127 dated April 27, 2023. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

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

- 1. KOS Nature-Powered Organic Plant Protein Chocolate Flavored (390 g) - Perfluorooctanoic Acid (PFOA)**

2. **KOS Nature-Powered Organic Plant Protein Vanilla Flavored (518 g) - Perfluorooctanoic Acid (PFOA)**
3. **KOS Nature-Powered Organic Plant Protein Chocolate Flavored (546 g) – Perfluorooctanoic Acid (PFOA)**
4. **KOS Nature-Powered Organic Plant Protein Chocolate Chip Mint Flavored (546 g) - Perfluorooctanoic Acid (PFOA)**
5. **KOS Nature-Powered Organic Plant Protein Vanilla Flavored (370 g) - Perfluorooctanoic Acid (PFOA)**

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause cancer.

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 27, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

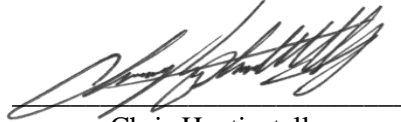
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall the identified products so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for products sold in the future while reformulating such products to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed products, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

October 15, 2024

Page 3

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Heptinstall', is written over a horizontal line.

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2023-01127 dated April 27, 2023**

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

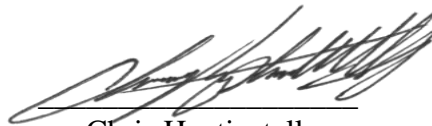
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024

A handwritten signature in black ink, appearing to read 'Chris Heptinstall', written over a horizontal line.

Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

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

October 15, 2024

Page 6

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DA.Prop65@co.nevada.ca.us

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Prop65notice@ocdapa.org

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David Hollister, District Attorney  
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Riverside, CA 92501  
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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@sdcda.org

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

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

October 15, 2024

Page 7

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

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

Henry Lifton, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Prop65@sfcityatt.org

Jeffrey S. Rosell, District Attorney  
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Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

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

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

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

Phillip J. Cline, District Attorney  
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221 S Mooney Blvd  
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Christopher Dalbey, Deputy District Attorney  
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Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

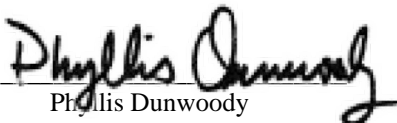
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody



**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
17300 Hwy 89  
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 6<sup>th</sup> St  
Colusa, CA 95932

District Attorney, Del Norte  
County  
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Crescent City, CA 95531

District Attorney, Glenn  
County  
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Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
300 South G Street, Ste 300  
Madera, CA 93637

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

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

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

District Attorney, San  
Bernardino County  
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San Bernadino, CA 92415

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

District Attorney, Shasta  
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1355 West Street  
Redding, CA 96001

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

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

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

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

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

District Attorney, Trinity  
County  
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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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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





## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

**\*\*\*This Notice amends the original Notice of Violation AG Number 2023-01360 dated May 18, 2023. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

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

- 1. KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavored 585g - Perfluorooctanoic Acid (PFOA)**



2. **KOS Nature-Powered Organic Plant Protein Salted Caramel Coffee Flavored 518g - Perfluorooctanoic Acid (PFOA)**
3. **KOS Nature-Powered Organic Plant Protein with Blue Spirulina & Immunity Blend Blueberry Muffin Flavor 585g – Perfluorooctanoic Acid (PFOA)**

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause cancer.

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 18, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

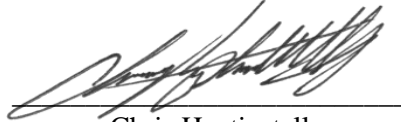
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall the identified products so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for products sold in the future while reformulating such products to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed products, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

October 15, 2024

Page 3

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Heptinstall', is written over a horizontal line.

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

**\*date reflects original violation date of AG Number 2023-01360 dated May 18, 2023**

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior**

I, Chris Heptinstall, hereby declare:

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

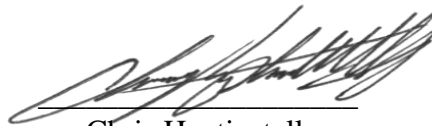
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 15, 2024

A handwritten signature in black ink, appearing to read 'Chris Heptinstall', written over a horizontal line.

Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Yisheng Lin, Chief Executive Officer  
or Current President or CEO  
Excelsior Nutrition Inc, individually and dba 4Excelsior  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Yisheng Lin  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1206 N Miller St, Ste D  
Anaheim, CA 92806

Ying Chen  
(Registered Agent for Excelsior Nutrition Inc,  
individually and dba 4Excelsior)  
1 Chapin Rd, Unit 1  
Pine Brook, NJ 07058

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
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CEPDProp65@acgov.org

Barbara Yook, District Attorney  
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Prop65Env@co.calaveras.ca.us

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

October 15, 2024

Page 6

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Prop65@sacda.org

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SanDiegoDAProp65@sdcda.org

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

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

October 15, 2024

Page 7

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San Francisco District Attorney's Office  
350 Rhode Island Street  
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Alexandra.grayner@sfgov.org

Nora V. Frimann, City Attorney  
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Proposition65notices@sanjoseca.gov

Henry Lifton, Deputy City Attorney  
San Francisco City Attorney  
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Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Tori Verber Salazar, District Attorney  
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DAConsumer.Environmental@sjcda.org

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

Eric J. Dobroth, Deputy District Attorney  
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Christopher Dalbey, Deputy District Attorney  
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Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

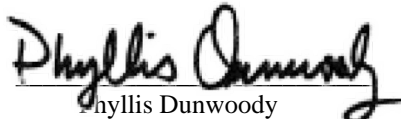
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 15, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
17300 Hwy 89  
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 6<sup>th</sup> St  
Colusa, CA 95932

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

District Attorney, Los Angeles  
County  
Hall of Justice  
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Los Angeles, CA 90012

District Attorney, Madera  
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300 South G Street, Ste 300  
Madera, CA 93637

District Attorney, Mendocino  
County  
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Ukiah, CA 95482

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

District Attorney, Mono  
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District Attorney, San Benito  
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Hollister, CA 95023

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Bernardino County  
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San Bernadino, CA 92415

District Attorney, San Mateo  
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Redwood City, CA 94063

District Attorney, Shasta  
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1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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



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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# **EXHIBIT B**



## Environmental Research Center

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

January 5, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Target Brands, Inc.  
Target Corporation**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

**KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Flavored  
- Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause

January 5, 2024

Page 2

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 5, 2021, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in blue ink, appearing to be 'CP' followed by a long horizontal stroke.

---

Charles Poss  
In-House Counsel  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Target Brands, Inc., Target Corporation, and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Target Brands, Inc. and Target Corporation**

I, Charles Poss, declare:

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

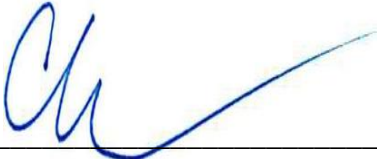
2. I am an attorney for the noticing party.

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 chemical that is the subject of the notice.

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

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

Dated: January 5, 2024

  
\_\_\_\_\_  
Charles Poss



**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On January 5, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Target Brands, Inc. and Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403

CT Corporation System  
(Registered Agent for Target Corporation)  
330 N Brand Blvd, Ste 700  
Glendale, CA 91203

Current President or CEO  
Target Brands, Inc. and Target Corporation  
89 Forest Rd  
Franklin, IN 46131

CT Corporation System  
(Registered Agent for Target Brands, Inc.  
and Target Corporation)  
1010 Dale St N  
St. Paul, MN 55117

On January 5, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 5, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
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7677 Oakport Street, Suite 650  
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CEPDProp65@acgov.org

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

January 5, 2024

Page 5

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

January 5, 2024

Page 6

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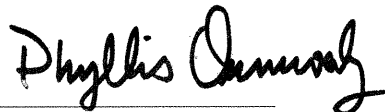
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Jeff W. Reisig, District Attorney  
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cfepd@yolocounty.org

On January 5, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:  
**NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;**  
**CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 5, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

January 5, 2024

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**Service List**

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County  
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245  
Oroville, CA 95965

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

District Attorney, Del Norte  
County  
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Crescent City, CA 95531

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Willows, CA 95988

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Eureka, CA 95501

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El Centro, CA 92243

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1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
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Hanford, CA 93230

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

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

District Attorney, Madera  
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Madera, CA 93637

District Attorney, Mendocino  
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Ukiah, CA 95482

District Attorney, Modoc  
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Alturas, CA 96101-4020

District Attorney, Mono  
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San Bernadino, CA 92415

District Attorney, San Mateo  
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District Attorney, Sierra  
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Downieville, CA 95936

District Attorney, Siskiyou  
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675 Texas Street, Ste 4500  
Fairfield, CA 94533

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

District Attorney, Sutter  
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463 2<sup>nd</sup> Street  
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District Attorney, Tehama  
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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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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



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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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





## Environmental Research Center

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

January 19, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Target Brands, Inc.  
Target Corporation**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

**KOS Nature-Powered Organic Superfood Plant Protein Powder with Blue Spirulina  
Blueberry Muffin Flavored - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause

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

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


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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 19, 2021, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in blue ink, appearing to be 'CP' followed by a long horizontal stroke.

---

Charles Poss  
In-House Counsel  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Target Brands, Inc., Target Corporation, and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Target Brands, Inc. and Target Corporation**

I, Charles Poss, declare:

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

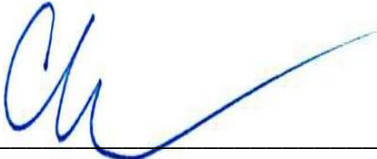
2. I am an attorney for the noticing party.

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 chemical that is the subject of the notice.

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

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

Dated: January 19, 2024

  
\_\_\_\_\_  
Charles Poss

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On January 19, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Target Brands, Inc. and Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403

CT Corporation System  
(Registered Agent for Target Corporation)  
330 N Brand Blvd, Ste 700  
Glendale, CA 91203

Current President or CEO  
Target Brands, Inc. and Target Corporation  
89 Forest Rd  
Franklin, IN 46131

CT Corporation System  
(Registered Agent for Target Brands, Inc.  
and Target Corporation)  
1010 Dale St N  
St. Paul, MN 55117

On January 19, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 19, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

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

January 19, 2024

Page 5

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

James Clinchard, Assistant District Attorney  
El Dorado County  
778 Pacific Street  
Placerville, CA 95667  
EDCDAPROP65@edcda.us

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

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

Devin Chandler, Program Coordinator  
Lassen County  
2950 Riverside Dr  
Susanville, CA 96130  
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney  
Marin County  
3501 Civic Center Drive, Suite 145  
San Rafael, CA 94903  
consumer@marincounty.org

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

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

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

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

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

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@ocdapa.org

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

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

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

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

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

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

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

January 19, 2024

Page 6

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

Henry Lifton, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Prop65@sfcityatt.org

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222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

Nora V. Frimann, City Attorney  
Santa Clara City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> 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

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Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

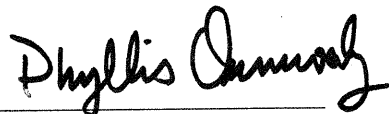
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On January 19, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:  
**NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;**  
**CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 19, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody



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

January 19, 2024

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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 6<sup>th</sup> St  
Colusa, CA 95932

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

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

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

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

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

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

# **EXHIBIT C**



## Environmental Research Center

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

January 26, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Vitacost.com, Inc.**

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

- 1. KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Flavored - Lead**
- 2. KOS Nature-Powered Organic Superfood Plant Protein Powder Vanilla Flavored - Lead**
- 3. KOS Nature-Powered Organic Superfood Plant Protein Powder Salted Caramel Coffee Flavored - Lead**

4. **KOS Nature-Powered Organic Superfood Plant Protein Powder Unflavored & Unsweetened - Lead**
5. **KOS Nature-Powered Organic Superfood Plant Protein Powder Blueberry Muffin Flavored - Lead**
6. **KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Peanut Butter Flavored – Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 26, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

January 26, 2024

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Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



---

Charles Poss  
In-House Counsel  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Vitacost.com, Inc. and its Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Vitacost.com, Inc.**

I, Charles Poss, declare:

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

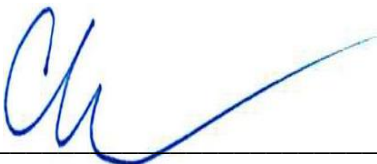
2. I am an attorney for the noticing party.

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 chemical that is the subject of the notice.

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

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

Dated: January 26, 2024

  
\_\_\_\_\_  
Charles Poss

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On January 26, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Vitacost.com, Inc.  
1014 Vine Street  
Cincinnati, OH 45202

Current President or CEO  
Vitacost.com, Inc.  
4700 Exchange Ct, Ste 200  
Boca Raton, FL 33431

Current President or CEO  
Vitacost.com, Inc.  
5400 Broken Sound Boulevard NW, Suite 500  
Boca Raton, FL 33487

Corporation Service Company  
(Registered Agent for Vitacost.com, Inc.)  
1201 Hays Street  
Tallahassee, FL 32301

Corporation Service Company  
(Registered Agent for Vitacost.com, Inc.)  
251 Little Falls Dr  
Wilmington, DE 19808

On January 26, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 26, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

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

January 26, 2024

Page 6

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

James Clinchard, Assistant District Attorney  
El Dorado County  
778 Pacific Street  
Placerville, CA 95667  
EDCDAPROP65@edcda.us

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

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

Devin Chandler, Program Coordinator  
Lassen County  
2950 Riverside Dr  
Susanville, CA 96130  
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney  
Marin County  
3501 Civic Center Drive, Suite 145  
San Rafael, CA 94903  
consumer@marincounty.org

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

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

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

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

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

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@ocdapa.org

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

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

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

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

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

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



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

January 26, 2024

Page 7

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

Henry Lifton, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Prop65@sfcityatt.org

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

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

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

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

Nora V. Frimann, City Attorney  
Santa Clara City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> 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

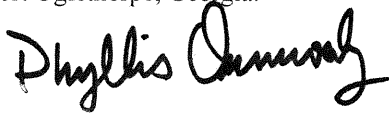
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

On January 26, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:  
**NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;**  
**CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 26, 2024, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

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

January 26, 2024

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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 6<sup>th</sup> St  
Colusa, CA 95932

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

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

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

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

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

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

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# **EXHIBIT D**





## Environmental Research Center

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

December 14, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**CVS Pharmacy, Inc.  
CVS Health Corporation**

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

- 1. KOS Nature-Powered Organic Plant Protein Chocolate Flavored – Lead**
- 2. KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavored - Lead**

December 14, 2023

Page 2

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

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

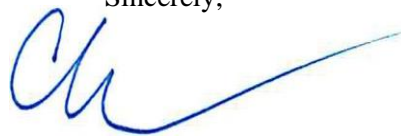
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least December 14, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CP', with a long horizontal flourish extending to the right.

---

Charles Poss  
In-House Counsel  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to CVS Pharmacy, Inc., CVS Health Corporation, and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by CVS Pharmacy, Inc.; CVS Health Corporation**

I, Charles Poss, declare:

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

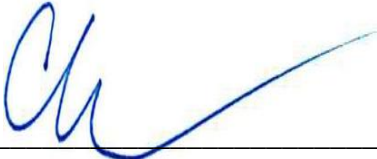
2. I am an attorney for the noticing party.

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 chemical that is the subject of the notice.

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

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

Dated: December 14, 2023

  
\_\_\_\_\_  
Charles Poss

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On December 14, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
CVS Pharmacy, Inc. and CVS  
Health Corporation  
1 CVS Drive  
Woonsocket, RI 02895

The Corporation Trust Company  
(Registered Agent for CVS Health Corporation and  
CVS Pharmacy, Inc.)  
1209 N. Orange Street  
Wilmington, DE 19801

CT Corporation System  
(Registered Agent for CVS Pharmacy, Inc.)  
330 North Brand Blvd, Suite 700  
Glendale, CA 91203

CT Corporation System  
(Registered Agent for CVS Pharmacy, Inc.)  
450 Veterans Memorial Parkway, Ste 7A  
East Providence, RI 02914

Current President or CEO  
CVS Health Corporation  
8911 Cynthia St, Ste 1  
West Hollywood, CA 90069

Elaine Selan  
(Registered Agent for CVS Health Corporation)  
416 W San Ysidro Blvd, L-1958  
San Ysidro, CA 92173

On December 14, 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On December 14, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

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

December 14, 2023

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

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Page 6

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Jeannie.Barnes@sonoma-county.org

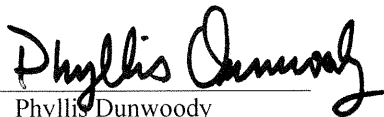
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daspecialops@ventura.org

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

On December 14, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:  
**NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;**  
**CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on December 14, 2023, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

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**Service List**

District Attorney, Alpine  
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District Attorney, Butte  
County  
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245  
Oroville, CA 95965

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County  
310 6<sup>th</sup> St  
Colusa, CA 95932

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County  
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Crescent City, CA 95531

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Bakersfield, CA 93301

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Hanford, CA 93230

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Lakeport, CA 95453

District Attorney, Los Angeles  
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Hall of Justice  
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Los Angeles, CA 90012

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Madera, CA 93637

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District Attorney, Modoc  
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Bridgeport, CA 93517

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Hollister, CA 95023

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San Bernadino, CA 92415

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Redding, CA 96001

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Fairfield, CA 94533

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Weaverville, CA 96093

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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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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



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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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