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15 Health, HGGC, LLC, Nutraceutical Corporation, Nutraceutical
16 International Corporation, and The Better Being Co., LLC

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

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

22 **Plaintiff,**

23 **vs.**

24 **NUTRAMARKS, INC., individually and**
25 **dba DYNAMIC HEALTH; HGGC, LLC;**
26 **NUTRACEUTICAL CORPORATION;**
27 **NUTRACEUTICAL INTERNATIONAL**
28 **CORPORATION; THE BETTER BEING**
CO., LLC; and DOES 1-100

Defendants.

CASE NO. 24CV071817

[PROPOSED] STIPULATED
CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 15, 2024

Trial Date: None set

1. INTRODUCTION

1.1 On April 15, 2024, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing

1 a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 (“Proposition 65”), against NutraMarks, Inc., individually and dba Dynamic Health,
4 Nutraceutical Corporation, Nutraceutical International Corporation, The Better Being Co.,
5 LLC (collectively “Dynamic Health”), HGGC, LLC, and Does 1-100. In this action, ERC
6 alleges that a number of products manufactured, distributed, or sold by Dynamic Health
7 contain lead and/or mercury, chemicals listed under Proposition 65 as carcinogens and/or
8 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
9 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
10 collectively as “Covered Products”) are: (1) Dynamic Health Tart Cherry Turmeric & Ginger
11 Tonic (lead), (2) Dynamic Health Black Cherry Concentrate (lead), (3) Dynamic Health
12 Healthy Blend Formulated with Acai, Mangosteen, Noni, Maqui & Aloe Vera (lead), (4)
13 Dynamic Health Certified Organic Pomegranate Unsweetened 100% Juice Concentrate (lead),
14 (5) Dynamic Health Cranberry Turmeric & Ginger Tonic (mercury), (6) Dynamic Health
15 Organic Aloe Vera Orange Mango Flavor 100% Juice (lead, mercury) (7) Dynamic Health
16 Certified Organic Tart Cherry Unsweetened 100% Juice Concentrate (lead, mercury), and (8)
17 Dynamic Health Sambucus Black Elderberry Concentrate (lead).

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

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

24 **1.4** For purposes of this Consent Judgment, the Parties agree that Dynamic Health is a
25 business entity that has employed ten or more persons at all times relevant to this action and
26 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
27 Dynamic Health manufactures, distributes, and/or sells the Covered Products.

28 **1.5** For purposes of this Consent Judgment, the Parties stipulate that Dynamic Health

1 manufactures, distributes, and/or sells the Covered Products. Dynamic Health represents that
2 HGGC, LLC does not manufacture, distribute or sell the Covered Products. Dynamic Health will
3 take full responsibility for and be obligated for all payments or actions required of either HGGC,
4 LLC or Dynamic Health, or both, pursuant to this Consent Judgment and will not at any time
5 attempt to shift the performance of any responsibility or obligation Dynamic Health may have
6 under this Consent Judgment to HGGC, LLC.

7 **1.6** The Complaint is based on allegations contained in ERC’s Notices of Violation
8 dated December 5, 2023 and December 14, 2023 that were served on the California Attorney
9 General, other public enforcers, and Dynamic Health and HGGC, LLC (“Notices”). True and
10 correct copies of the 60-Day Notices dated December 5, 2023 and December 14, 2023 are
11 attached hereto as **Exhibits A and B** and each is incorporated herein by reference. More than
12 60 days have passed since the Notices were served on the Attorney General, public enforcers,
13 and Dynamic Health and no designated governmental entity has filed a Complaint against
14 Dynamic Health with regard to the Covered Products or the alleged violations.

15 **1.7** ERC’s Notices and Complaint allege that use of the Covered Products by California
16 consumers exposes them to lead and/or mercury without first receiving clear and reasonable
17 warnings from Dynamic Health and HGGC, LLC, which is in violation of California Health
18 and Safety Code section 25249.6. Dynamic Health and HGGC, LLC deny all material
19 allegations contained in the Notices and Complaint.

20 **1.8** The Parties have entered into this Consent Judgment in order to settle, compromise,
21 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
22 Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed
23 as an admission by any of the Parties or by any of their respective officers, directors,
24 shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
25 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law,
26 or violation of law.

27 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in

1 any current or future legal proceeding unrelated to these proceedings.

2 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
3 as a Judgment by this Court.

4 **2. JURISDICTION AND VENUE**

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

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

13 **3.1** Beginning on the Effective Date, Dynamic Health shall be permanently enjoined
14 from manufacturing for sale in the State of California, “Distributing into the State of
15 California,” or directly selling in the State of California, any Covered Product that exposes a
16 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
17 “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it
18 meets the warning requirements under Section 3.2.

19 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
20 of California” shall mean to directly ship a Covered Product into California for sale in
21 California or to sell a Covered Product to a distributor that Dynamic Health knows or has
22 reason to know will sell the Covered Product in California.

23 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
24 Level” shall be measured in micrograms, and shall be calculated using the following formula:
25 micrograms of lead 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 lead exposure per day. If the label contains no

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

2 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
3 Level” shall be measured in micrograms, and shall be calculated using the following formula:
4 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
5 product (using the largest serving size appearing on the product label), multiplied by servings
6 of the product per day (using the largest number of recommended daily servings appearing on
7 the label), which equals micrograms of mercury exposure per day. If the label contains no
8 recommended daily servings, then the number of recommended daily servings shall be one.

9 **3.2 Clear and Reasonable Warnings**

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

12 **OPTION 1:**

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

16 or

17 **OPTION 2:**

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

19 Dynamic Health shall use the phrase “cancer and” in the Warning if Dynamic Health has
20 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
21 determined pursuant to the quality control methodology set forth in Section 3.4 or if Dynamic
22 Health has reason to believe that another Proposition 65 chemical is present which may require a
23 cancer warning. As identified in the brackets in the Option 1 Warning, the Warning shall
24 appropriately reflect whether there is lead and/or mercury or another chemical that requires a
25 Proposition 65 warning present in each of the Covered Products, but if there is a chemical present
26 at a level that requires a cancer warning, the chemical requiring use of the phrase “cancer and” in
27 the Warning shall always be identified. For the Option 2 Warning, a symbol consisting of a black
28 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the

1 left of the text of the Warning, in a size no smaller than the height of the word “**WARNING**,” and
2 the word “**WARNING**” shall be in all capital letters and bold print. Where the sign, label or shelf
3 tag for the product is not printed using the color yellow, the symbol may be printed in black and
4 white.

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

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

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

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

27 **3.3 Conforming Covered Products**

28 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure

1 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Mercury Exposure
2 Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure
3 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
4 3.4, and that is not known by Dynamic Health to contain other chemicals that violate Proposition
5 65’s safe harbor thresholds.

6 **3.4 Testing and Quality Control Methodology**

7 **3.4.1** Beginning within one year of the Effective Date, Dynamic Health shall
8 arrange for lead and mercury testing of the Covered Products at least once a year for a
9 minimum of five consecutive years by arranging for testing of three (3) randomly selected
10 samples of each of the Covered Products, in the form intended for sale to the end-user, which
11 Dynamic Health intends to sell or is manufacturing for sale in California, directly selling to a
12 consumer in California or “Distributing into the State of California.” If tests conducted
13 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
14 each of five consecutive years, then the testing requirements of this Section will no longer be
15 required as to that Covered Product. However, if during or after the five-year testing period,
16 Dynamic Health changes ingredient suppliers for any of the Covered Products and/or
17 materially reformulates any of the Covered Products, Dynamic Health shall test that Covered
18 Product annually for at least three (3) consecutive years after such change is made, but in no
19 case shall these testing requirements run longer than six (6) years from the Effective Date.

20 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
21 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three
22 (3) randomly selected samples of the Covered Products will be controlling.

23 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
24 laboratory method that complies with the performance and quality control factors appropriate
25 for the method used, including limit of detection and limit of quantification, sensitivity,
26 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
27 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
28 mg/kg.

1 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
2 independent third party laboratory certified by the California Environmental Laboratory
3 Accreditation Program or an independent third-party laboratory that is registered with the
4 United States Food & Drug Administration.

5 **3.4.5** Nothing in this Consent Judgment shall limit Dynamic Health’s ability
6 to conduct, or require that others conduct, additional testing of the Covered Products, including
7 the raw materials used in their manufacture.

8 **3.4.6** Within thirty (30) days of ERC’s written request, Dynamic Health shall
9 deliver lab reports obtained pursuant to Section 3.4 to ERC. Dynamic Health shall retain all
10 test results and documentation for a period of five years from the date of each test.

11 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
12 any Covered Product for which Dynamic Health is providing a Warning, continuously and
13 without interruption from the Effective Date, pursuant to Section 3.2 of this Agreement. In the
14 event a Warning is provided after the Effective Date but Dynamic Health thereafter ceases to
15 provide the Warning, the testing and reporting requirements of Section 3.4 of this Agreement
16 shall apply beginning within one year after the date the Warning ceases to be provided, unless
17 Dynamic Health can show to the satisfaction of ERC that the cessation in providing the
18 Warning was a temporary error that was resolved when discovered.

19 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC from
20 obtaining and relying upon its own testing for purposes of enforcement, so long as such testing
21 meets the requirements of Sections 3.4.3 and 3.4.4.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney’s fees, and costs, Dynamic Health shall make a total payment of \$90,000.00 (“Total
25 Settlement Amount”) to ERC within 7 days of the Effective Date (“Due Date”). Dynamic
26 Health shall make this payment by wire transfer to ERC’s account, for which ERC will give
27 Dynamic Health the necessary account information. The Total Settlement Amount shall be
28 apportioned as follows:

1 **4.2** \$13,000.00 shall be considered a civil penalty pursuant to California Health and
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$9,750.00) of the civil penalty to the
3 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,250.00) of the civil penalty.

6 **4.3** \$6,277.14 shall be distributed to ERC as reimbursement to ERC for reasonable
7 costs incurred in bringing this action.

8 **4.4** \$9,398.00 shall be distributed to ERC as an Additional Settlement Payment
9 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to
10 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities
11 that address the same public harm as allegedly caused by Defendants in this matter. These
12 activities are detailed below and support ERC’s overarching goal of reducing and/or
13 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s
14 activities have had, and will continue to have, a direct and primary effect within the State of
15 California because California consumers will be benefitted by the reduction and/or elimination
16 of exposure to lead and/or mercury in dietary supplements and/or by providing clear and
17 reasonable warnings to California consumers prior to ingestion of the products.

18 Based on a review of past years’ actual budgets, ERC is providing the following list of
19 activities ERC engages in to protect California consumers through Proposition 65 citizen
20 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
21 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing
22 dietary supplement products that may contain lead and/or mercury and are sold to California
23 consumers. This work includes continued monitoring and enforcement of past consent
24 judgments and settlements to ensure companies are in compliance with their obligations
25 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
26 mercury. This work also includes investigation of new companies that ERC does not obtain
27 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
28 (up to 10-20%): maintaining ERC’s Voluntary Compliance Program by acquiring products

1 from companies, developing and maintaining a case file, testing products from these
2 companies, providing the test results and supporting documentation to the companies, and
3 offering guidance in warning or implementing a self-testing program for lead and/or mercury
4 in dietary supplement products; and (3) “GOT LEAD” PROGRAM (up to 5%): maintaining
5 ERC’s “Got Lead?” Program which reduces the numbers of contaminated products that reach
6 California consumers by providing access to free testing for lead in dietary supplement
7 products (Products submitted to the program are screened for ingredients which are suspected
8 to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified
9 laboratory for testing, and the results shared with the consumer that submitted the product).

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

15 **4.5** \$61,324.86 shall be distributed to ERC for its in-house legal fees. Except as
16 explicitly provided herein, each Party shall bear its own fees and costs.

17 **4.6** In the event that Dynamic Health fails to remit the Total Settlement Amount
18 owed under Section 4 of this Consent Judgment on or before the Due Date, Dynamic Health
19 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
20 shall provide written notice of the delinquency to Dynamic Health via electronic mail. If
21 Dynamic Health fails to deliver the Total Settlement Amount within five (5) days from the
22 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
23 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
24 Dynamic Health agrees to pay ERC’s reasonable attorney’s fees and costs for any efforts to
25 collect the payment due under this Consent Judgment.

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written
28 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by

1 motion of either Party pursuant to Section 5.3 and upon entry by the Court of a modified
2 consent judgment.

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

15 **5.3** In the event that Dynamic Health initiates or otherwise requests a modification
16 under Section 5.1, and the meet and confer process leads to a joint motion or joint application
17 for a modification of the Consent Judgment, Dynamic Health 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.

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

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

24 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming Covered
25 Product (for which ERC alleges that no Warning has been provided), then ERC shall inform
26 Dynamic Health in a reasonably prompt manner of its test results, including information
27 sufficient to permit Dynamic Health to identify the Covered Products at issue. Dynamic Health
28 shall, within thirty (30) days following such notice, provide ERC with testing information,

1 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and
2 3.4.4, demonstrating Dynamic Health’s compliance with the Consent Judgment. The Parties
3 shall first attempt to resolve the matter prior to ERC taking any further legal action.

4 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

12 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
13 behalf of itself and in the public interest, and Dynamic Health and its respective officers,
14 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
15 franchisees, licensees, customers (not including private label customers of Dynamic Health),
16 distributors, wholesalers, retailers (including Vitacost.com, Inc, Vitamin Shoppe Industries
17 LLC, Vitamin Shoppe Procurement Services, LLC, Vitamin Shoppe Global, LLC, Vitamin
18 Shoppe, Inc., and VitaminShoppe.com, Inc.), HGGC, LLC, and all other upstream and
19 downstream entities in the distribution chain of any Covered Product, and the predecessors,
20 successors, and assigns of any of them (collectively, “Released Parties”).

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

1 Products regarding lead and/or mercury up to and including the Effective Date.

2 **8.3** ERC on its own behalf only, and Dynamic Health on its own behalf only, further
3 waive and release any and all claims they may have against each other for all actions or
4 statements made or undertaken in the course of seeking or opposing enforcement of
5 Proposition 65 in connection with the Notices and Complaint up through and including the
6 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
7 right to seek to enforce the terms of this Consent Judgment.

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

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

20 ERC on behalf of itself only, and Dynamic Health on behalf of itself only, acknowledge and
21 understand the significance and consequences of this specific waiver of California Civil Code
22 section 1542.

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

26 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
27 environmental exposures arising under Proposition 65, nor shall it apply to any of Dynamic
28 Health' products other than the Covered Products.

1 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

5 **10. GOVERNING LAW**

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

8 **11. PROVISION OF NOTICE**

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

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

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

18 With a copy to:

19 Charles W. Poss (SBN 325366)
20 Environmental Research Center, Inc.
21 3111 Camino Del Rio North, Suite 400
22 San Diego, CA 92108
23 Ph: (619) 500-3090
24 Email: charles.poss@erc501c3.org

25 **FOR NUTRAMARKS, INC., individually and dba DYNAMIC HEALTH; HGGC, LLC;
26 NUTRACEUTICAL CORPORATION; NUTRACEUTICAL INTERNATIONAL
27 CORPORATION; THE BETTER BEING CO., LLC:**

28 Lauren Taylor Beard
29 VP-Legal, Chief Compliance Officer
30 Nutraceutical Corporation
31 222 S. Main St., Suite 1600
32 Salt Lake City, UT 84101
33 (435) 655-6111
34 Email: LBeard@betterbeing.com

35 ///

1 With a copy to:
2 Brian Ledger (SBN 156942)
3 Gordon Rees Scully Mansukhani, LLP
4 101 W Broadway, Ste 1600
5 San Diego, CA 92101
6 Ph: (619) 696-6700
7 Email: bledger@grsm.com

8 **12. COURT APPROVAL**

9 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
10 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
11 Consent Judgment.

12 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
13 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
14 prior to the hearing on the motion.

15 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
16 void and have no force or effect.

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

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

///

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

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

7 **16. ENFORCEMENT**

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

16 **17. ENTIRE AGREEMENT, AUTHORIZATION**

17 **17.1** This Consent Judgment contains the sole and entire agreement and
18 understanding of the Parties with respect to the entire subject matter herein, including any and
19 all prior discussions, negotiations, commitments, and understandings related thereto. No
20 representations, oral or otherwise, express or implied, other than those contained herein have
21 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
22 herein, shall be deemed to exist or to bind any Party.

23 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

27 This Consent Judgment has come before the Court upon the request of the Parties. The
28 Parties request the Court to fully review this Consent Judgment and, being fully informed

1 Dated: 08/13/2024, 2024

NUTRACEUTICAL INTERNATIONAL CORPORATION

Stanley Soper
34EAE27A4821F82CD61A7F7C7AA000370 contractworks

By: Stan Soper
Its: Chief Legal Officer & Secretary

6 Dated: 08/13/2024, 2024

THE BETTER BEING CO., LLC

Brian Slobodow
A32825ACD03D03F752ED22E5C2A4E226 contractworks

By: Brian Slobodow
Its: Chief Executive Officer

14 APPROVED AS TO FORM:

15 Dated: August 15, 2024

ENVIRONMENTAL RESEARCH CENTER, INC.

By: [Signature]
Charles W. Poss
In-House Counsel

20 Dated: 8/14/, 2024

GORDON REES SCULLY MANSUKHANI, LLP

By: [Signature]
Brian Ledger
Attorney for Defendants NutraMarks, Inc., individually and dba Dynamic Health, HGGC, LLC, Nutraceutical Corporation, Nutraceutical International Corporation, and The Better Being Co., LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2024 _____
Judge of the Superior Court

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EXHIBIT A



Environmental Research Center

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

December 5, 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:

**NutraMarks, Inc., individually and dba Dynamic Health
HGGC, LLC
Nutraceutical Corporation
Nutraceutical International Corporation
The Better Being Co., LLC**

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. **Dynamic Health Tart Cherry Turmeric & Ginger Tonic - Lead**
2. **Dynamic Health Black Cherry Concentrate - Lead**
3. **Dynamic Health Healthy Blend Formulated with Acai, Mangosteen, Noni, Maqui & Aloe Vera - Lead**
4. **Dynamic Health Certified Organic Pomegranate Unsweetened 100% Juice Concentrate – Lead**
5. **Dynamic Health Cranberry Turmeric & Ginger Tonic - 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 December 5, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.


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

December 5, 2023

Page 3

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 NutraMarks, Inc., individually and dba Dynamic Health; HGGC, LLC; Nutraceutical Corporation; Nutraceutical International Corporation; The Better Being Co., LLC 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 NutraMarks, Inc., individually and dba Dynamic Health; HGGC, LLC; Nutraceutical Corporation; Nutraceutical International Corporation; The Better Being Co., LLC

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.

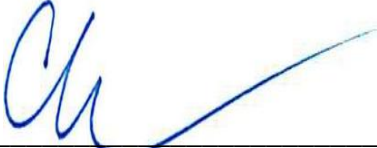
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

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

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

Dated: December 5, 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 5, 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
NutraMarks, Inc., individually and dba
Dynamic Health, Nutraceutical Corporation,
Nutraceutical International Corporation, and
The Better Being Co., LLC
222 S. Main Street, 16th Floor
Salt Lake City, UT 84101

The Prentice-Hall Corporation System, Inc.
(Registered Agent for NutraMarks, Inc.,
individually and dba Dynamic Health and
Nutraceutical Corporation)
251 Little Falls Drive
Wilmington, DE 19808

The Prentice-Hall Corporation System, Inc.
(Registered Agent for Nutraceutical Corporation)
15 West South Temple, Suite 600
Salt Lake City, UT 84101

Intertrust Corporate Services Delaware Ltd.
(Registered Agent for The Better Being Co., LLC)
251 Little Falls Drive
Wilmington, DE 19808

Corporation Service Company
(Registered Agent for Nutraceutical International
Corporation and HGGC, LLC)
251 Little Falls Drive
Wilmington, DE 19808

Current President or CEO
HGGC, LLC
1950 University Avenue, Suite 350
East Palo Alto, CA 94303

Corporation Service Company Which Will Do
Business in California as CSC Lawyers Incorporating
Service
(Registered Agent for HGGC, LLC)
2710 Gateway Oaks Drive, #150N
Sacramento, CA 95833

On December 5, 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

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

December 5, 2023

Page 6

On December 5, 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

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 73
Mariposa, CA 95338
mcda@mariposacounty.org

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

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

Stacey Grassini, Deputy District Attorney
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900 Ward Street
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sgrassini@contracostada.org

Jeannine M. Pacioni, District Attorney
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1200 Aguajito Road
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EDCDAPROP65@edcda.us

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

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

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

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

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@ocdapa.org

Devin Chandler, Program Coordinator
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2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

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

Lori E. Frugoli, District Attorney
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3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

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

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

December 5, 2023

Page 7

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

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

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

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityattorney.org

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

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

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

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, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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

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

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

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

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

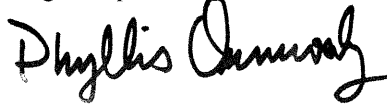
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

December 5, 2023

Page 8

On December 5, 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 5, 2023, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



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:

**NutraMarks, Inc., individually and dba Dynamic Health
HGGC, LLC
Nutraceutical Corporation
Nutraceutical International Corporation
The Better Being Co., LLC**

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. **Dynamic Health Organic Aloe Vera Orange Mango Flavor 100% Juice – Lead, Mercury**
2. **Dynamic Health Certified Organic Tart Cherry Unsweetened 100% Juice Concentrate – Lead, Mercury**
3. **Dynamic Health Sambucus Black Elderberry Concentrate - 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.

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 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 these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.


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

December 14, 2023

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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 NutraMarks, Inc., individually and dba Dynamic Health; HGGC, LLC; Nutraceutical Corporation; Nutraceutical International Corporation; The Better Being Co., LLC 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 NutraMarks, Inc., individually and dba Dynamic Health; HGGC, LLC; Nutraceutical Corporation; Nutraceutical International Corporation; The Better Being Co., LLC

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.

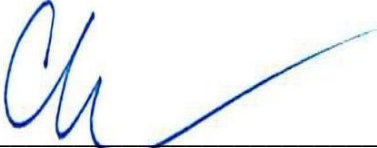
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

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

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

Dated: 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
NutraMarks, Inc., individually and dba
Dynamic Health, Nutraceutical Corporation,
Nutraceutical International Corporation, and
The Better Being Co., LLC
222 S. Main Street, 16th Floor
Salt Lake City, UT 84101

The Prentice-Hall Corporation System, Inc.
(Registered Agent for NutraMarks, Inc.,
individually and dba Dynamic Health and
Nutraceutical Corporation)
251 Little Falls Drive
Wilmington, DE 19808

The Prentice-Hall Corporation System, Inc.
(Registered Agent for Nutraceutical Corporation)
15 West South Temple, Suite 600
Salt Lake City, UT 84101

Intertrust Corporate Services Delaware Ltd.
(Registered Agent for The Better Being Co., LLC)
251 Little Falls Drive
Wilmington, DE 19808

Corporation Service Company
(Registered Agent for Nutraceutical International
Corporation and HGGC, LLC)
251 Little Falls Drive
Wilmington, DE 19808

Current President or CEO
HGGC, LLC
1950 University Avenue, Suite 350
East Palo Alto, CA 94303

Corporation Service Company Which Will Do
Business in California as CSC Lawyers Incorporating
Service
(Registered Agent for HGGC, LLC)
2710 Gateway Oaks Drive, #150N
Sacramento, CA 95833

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

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

December 14, 2023

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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

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 73
Mariposa, CA 95338
mcda@mariposacounty.org

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

Kimberly Lewis, District Attorney
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Prop65@countyofmerced.com

Stacey Grassini, Deputy District Attorney
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sgrassini@contracostada.org

Jeannine M. Pacioni, District Attorney
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EDCDAPROP65@edcda.us

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CEPD@countyofnapa.org

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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

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Independence, CA 93526
inyoda@inyocounty.us

Todd Spitzer, District Attorney
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Santa Ana, CA 92703
Prop65notice@ocdapa.org

Devin Chandler, Program Coordinator
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Susanville, CA 96130
dchandler@co.lassen.ca.us

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

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

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

December 14, 2023

Page 7

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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Summer Stephan, District Attorney
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San Diego, CA 92101
SanDiegoDAProp65@sdca.org

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

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
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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@sfcityatty.org

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

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

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

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

Jeffrey S. Rosell, District Attorney
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Prop65DA@santacruzcounty.us

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

Phillip J. Cline, District Attorney
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Prop65@co.tulare.ca.us

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

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

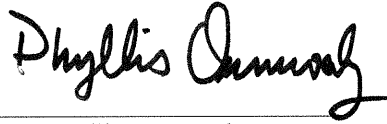
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

December 14, 2023

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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.

A handwritten signature in black ink, reading "Phyllis Dunwoody". The signature is written in a cursive style with a large initial "P".

Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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