

1 Charles W. Poss (SBN 325366)  
2 Environmental Research Center, Inc.  
3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Ph: (619) 500-3090  
6 Email: charles.poss@erc501c3.org

7 Attorney for Plaintiff Environmental Research Center, Inc.

8 Hazel Ocampo (SBN 281624)  
9 Greenberg Traurig LLP  
10 12760 High Bluff Drive, Suite 240  
11 San Diego, CA 92130  
12 Telephone: (619) 848-2515  
13 Email: ocampoh@gtlaw.com

14 Attorney for Defendants Big Bold Health, LLC, Big Bold Health  
15 Holdings, PBC, and Big Bold Health Holdings, Inc.

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

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

21 **Plaintiff,**

22 **vs.**

23 **BIG BOLD HEALTH, LLC; BIG BOLD**  
24 **HEALTH HOLDINGS, PBC; BIG BOLD**  
25 **HEALTH HOLDINGS, INC.; and DOES 1-**  
26 **100**

27 **Defendants.**

28 **CASE NO. 24CV078161**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 3, 2024

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On June 3, 2024, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-  
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing  
4 a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
2 (“Proposition 65”), against Big Bold Health, LLC, Big Bold Health Holdings, PBC, and Big  
3 Bold Health Holdings, Inc. (collectively “Big Bold Health”) and Does 1-100. In this action,  
4 ERC alleges that a number of products manufactured, distributed, or sold by Big Bold Health  
5 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin,  
6 and expose consumers to this chemical at a level requiring a Proposition 65 warning. These  
7 products (referred to hereinafter individually as a “Covered Product” or collectively as  
8 “Covered Products”) are: (1) Big Bold Health HTB Rejuvenate Superfood French Vanilla  
9 Flavor Advanced Protein Shake Mix and (2) Big Bold Health Himalayan Tartary Buckwheat  
10 Flour.

11 **1.2** ERC and Big Bold Health are hereinafter referred to individually as a “Party” or  
12 collectively as the “Parties.”

13 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
16 and encouraging corporate responsibility.

17 **1.4** For purposes of this Consent Judgment, the Parties agree that Big Bold Health is a  
18 business entity that has employed ten or more persons at all times relevant to this action and  
19 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. Big  
20 Bold Health manufactures, distributes, and/or sells the Covered Products.

21 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
22 dated March 7, 2024 that was served on the California Attorney General, other public  
23 enforcers, and Big Bold Health (“Notice”). A true and correct copy of the 60-Day Notice dated  
24 March 7, 2024 is attached hereto as **Exhibit A** and each is incorporated herein by reference.  
25 More than 60 days have passed since the Notice was served on the Attorney General, public  
26 enforcers, and Big Bold Health and no designated governmental entity has filed a Complaint  
27 against Big Bold Health with regard to the Covered Products or the alleged violations.

28 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products by

1 California consumers exposes them to lead without first receiving clear and reasonable  
2 warnings from Big Bold Health, which is in violation of California Health and Safety Code  
3 section 25249.6.

4 **1.7** Big Bold Health denies all material allegations contained in the Notice and  
5 Complainant maintains that it has not violated Proposition 65 or any other law or legal duty.  
6 Big Bold Health expressly denies any liability of any of the claims asserted and the facts  
7 alleged in the Complaint and the Notice. Nothing in this Consent Judgment shall be construed  
8 as an admission by Big Bold Health of any fact, finding, issue of law, or violation of law; nor  
9 shall compliance with this Consent Judgment constitute or be construed as an admission by Big  
10 Bold Health of any fact, finding, conclusion, issue of law, or violation of law, such being  
11 specifically denied by Big Bold Health. This Consent Judgment is the product of negotiation  
12 and compromise and is accepted by the Parties solely for the purpose of settling,  
13 compromising, and resolving the issues in dispute in this action.

14 **1.8** The Parties have entered into this Consent Judgment in order to settle,  
15 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
16 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
17 or be construed as an admission by any of the Parties or by any of their respective officers,  
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
19 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
20 issue of law, or violation of law. Except as expressly set forth herein, nothing in this Consent  
21 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties  
22 may have in any current or future legal proceeding unrelated to these proceedings.

23 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered  
24 as a Judgment by this Court and all Parties have been provided with a copy.

25 **1.10** The “Compliance Date” shall mean thirty (30) days after the Effective Date, or  
26 December 2, 2024, whichever is later.

## 27 **2. JURISDICTION AND VENUE**

28 For purposes of this Consent Judgment and any further court action that may become

1 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
2 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
3 over Big Bold Health as to the acts alleged in the Complaint, that venue is proper in Alameda  
4 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
5 resolution of all claims up through and including the Compliance Date that were or could have  
6 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

8 **3.1** Beginning on the Compliance Date, Big Bold Health shall be permanently  
9 enjoined from manufacturing for sale in the State of California, “Distributing into the State of  
10 California,” or directly selling in the State of California, any Covered Product that exposes a  
11 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it  
12 meets the warning requirements under Section 3.2.

13 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
14 of California” shall mean to directly ship a Covered Product into California for sale in  
15 California or to sell a Covered Product to a distributor that Big Bold Health knows will sell the  
16 Covered Product in California.

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

24 **3.2 Clear and Reasonable Warnings**

25 If Big Bold Health is required to provide a warning pursuant to Section 3.1, one of the  
26 following warnings must be utilized (“Warning”):

27 ///

28 ///

1 **OPTION 1:**

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

5 or

6 **OPTION 2:**

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

8 Big Bold Health shall use the phrase “cancer and” in the Warning if Big Bold Health has  
9 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as  
10 determined pursuant to the quality control methodology set forth in Section 3.4. For the Option 2  
11 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a  
12 bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than  
13 the height of the word “**WARNING,**” and the word “**WARNING**” shall be in all capital letters  
14 and bold print. Where the sign, label or shelf tag for the product is not printed using the color  
15 yellow, the symbol may be printed in black and white.

16 The Warning shall be securely affixed to or printed upon the label of each Covered  
17 Product and it must be set off from other surrounding information and enclosed in a box. In  
18 addition, for any Covered Product sold over the internet, the Warning shall be provided by  
19 including either the Warning or a clearly marked hyperlink using the word “**WARNING**” in all  
20 capital and bold letters on the Covered Product’s primary product display page, or by otherwise  
21 prominently displaying the Warning to the customer prior to completing the purchase. If the  
22 Warning is provided by a clearly marked hyperlink, the hyperlink must go directly to a page  
23 prominently displaying the Warning without content that detracts from the Warning. A Warning  
24 is not prominently displayed if the purchaser has to search for it in the general content of the  
25 website. If the Warning is provided on the checkout page, when a California delivery address is  
26 indicated for any purchase of any Covered Product, an asterisk or other identifying method must  
27 be utilized to identify which products on the checkout page are subject to the Warning.

28 The Warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
2 capital letters and in bold print. No statements intended to or likely to have the effect of  
3 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
4 Further no statements may accompany the Warning that state or imply that the source of the listed  
5 chemical has an impact on or results in a less harmful effect of the listed chemical.

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

12 If a Covered Product is being sold by an online third-party seller, known to and authorized  
13 to sell such Covered Product by Big Bold Health, and Big Bold Health cannot itself post the  
14 warning on the authorized online third-party seller’s website, then Big Bold Health must notify  
15 the authorized online third-party seller of its duty to provide an internet warning. Big Bold Health  
16 may comply with this obligation to notify authorized online third-party sellers by complying with  
17 27 C.C.R. § 25600.2 (2024) and providing the information required by 27 C.C.R. § 25600.2  
18 (2024) to any such authorized online third-party seller that is subject to California Health and  
19 Safety Code § 25249.6.

20 With respect to any downstream reseller customers of Big Bold Health who are subject to  
21 Proposition 65, Big Bold Health may give written notice, including labels, labeling, shelf signs, or  
22 tags bearing the Warning, and all other necessary warning materials, to the authorized agent of  
23 such downstream reseller customers. Such written notice shall instruct the downstream reseller  
24 customers that the labels, labeling, shelf signs, or tags bearing the Warning must be displayed on  
25 or in proximity to the Covered Products with such conspicuousness, as compared with other  
26 words, statements or designs as to render the Warning likely to be seen, read, and understood by  
27 an ordinary individual prior to sale. The written notice shall comply with all of the requirements  
28 set forth in 27 C.C.R. § 25600.2 (2024).

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

4 If subsequently enacted changes to Proposition 65 or its implementing regulations require  
5 the use of additional or different information on any warning specifically applicable to the  
6 Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor  
7 warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this  
8 Section.

### 9 **3.3 Conforming Covered Products**

10 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
11 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure  
12 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
13 3.4.

### 14 **3.4 Testing and Quality Control Methodology**

15 **3.4.1** Beginning within one year of the Effective Date, Big Bold Health shall  
16 arrange for lead testing of the Covered Products at least once a year for a minimum of four (4)  
17 consecutive years by arranging for testing of two (2) randomly selected samples of each of the  
18 Covered Products, in the form intended for sale to the end-user, which Big Bold Health intends  
19 to sell or is manufacturing for sale in California, directly selling to a consumer in California or  
20 “Distributing into the State of California.” If tests conducted pursuant to this Section  
21 demonstrate that no Warning is required for a Covered Product during each of four (4)  
22 consecutive years, then the testing requirements of this Section will no longer be required as to  
23 that Covered Product..

24 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
25 lead detection result of the two (2) randomly selected samples of the Covered Products will be  
26 controlling.

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

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

5 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
6 independent third party laboratory certified by the California Environmental Laboratory  
7 Accreditation Program or an independent third-party laboratory that is registered with the  
8 United States Food & Drug Administration. or the International Organization for  
9 Standardization (ISO) for qualitative and quantitative screening of food materials or other  
10 methods of analysis utilized by a laboratory accredited by the state of California. If a new or  
11 distinct test method is developed to test for lead in Covered Products that more accurately  
12 measures consumer exposure, Big Bold Health may request a modification to this Section of  
13 the Consent Judgment pursuant to Section 5.

14 **3.4.5** Nothing in this Consent Judgment shall limit Big Bold Health’s ability  
15 to conduct, or require that others conduct, additional testing of the Covered Products, including  
16 the raw materials used in their manufacture.

17 **3.4.6** Within thirty (30) days of ERC’s written request, Big Bold Health shall  
18 deliver lab reports obtained pursuant to Section 3.4 to ERC. Big Bold Health shall retain all  
19 test results and documentation for a period of two (2) years from the date of each test.

20 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC  
21 from obtaining and relying upon its own testing for purposes of enforcement, so long as such  
22 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this  
23 Consent Judgment is intended by either Party to set a precedent for the level of lead or other  
24 chemicals that is permissible in consumer products under Proposition 65.

#### 25 **4. SETTLEMENT PAYMENT**

26 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
27 payments, attorney’s fees, and costs, Big Bold Health shall make a total payment of  
28 \$42,500.00 (“Total Settlement Amount”) to ERC within ten (10) days of the Effective Date



1 (“Due Date”). Big Bold Health shall make this payment by wire transfer to ERC’s account, for  
2 which ERC will give Big Bold Health the necessary account information at least ten (10) days  
3 prior to its due date. Big Bold Health shall be excused for any delay in payment caused by  
4 ERC’s failure to timely produce the necessary account information. The Total Settlement  
5 Amount shall be apportioned as follows:

6 **4.2** \$4,000.00 shall be considered a civil penalty pursuant to California Health and  
7 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$3,000.00) of the civil penalty to the  
8 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
9 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
10 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,000.00) of the civil penalty.

11 **4.3** \$2,593.66 shall be distributed to ERC as reimbursement to ERC for reasonable  
12 costs incurred in bringing this action.

13 **4.4** \$35,906.34 shall be distributed to ERC for its in-house legal fees. Except as  
14 explicitly provided herein, each Party shall bear its own fees and costs.

15 **4.5** In the event that Big Bold Health fails to remit the Total Settlement Amount owed  
16 under Section 4 of this Consent Judgment on or before the Due Date, Big Bold Health shall be  
17 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
18 provide written notice of the delinquency to Big Bold Health via electronic mail. If Big Bold  
19 Health fails to deliver the Total Settlement Amount within seven (7) days from the written  
20 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate  
21 provided in the California Code of Civil Procedure section 685.010. Additionally, Big Bold  
22 Health agrees to pay ERC’s reasonable attorney’s fees and costs, if any, for any reasonable  
23 efforts to collect the payment due under this Consent Judgment.

## 24 **5. MODIFICATION AND ENFORCEMENT OF CONSENT JUDGMENT**

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

1           **5.2**     If Big Bold Health seeks to modify this Consent Judgment under Section 5.1,  
2 then Big Bold Health must provide written notice to ERC of its intent (“Notice of Intent”). If  
3 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then  
4 ERC must provide written notice to Big Bold Health within thirty (30) days of receiving the  
5 Notice of Intent. If ERC notifies Big Bold Health in a timely manner of ERC’s intent to meet  
6 and confer, then the Parties shall meet and confer in good faith as required in this Section. The  
7 Parties shall meet in person, via remote meeting, or by telephone within thirty (30) days of  
8 ERC’s notification of its intent to meet and confer. If ERC disputes the proposed modification,  
9 ERC shall provide to Big Bold Health a written basis for its position within thirty (30) days of  
10 such meeting. The Parties shall continue to meet and confer for an additional thirty (30) days  
11 after receipt of ERC’s written statement of position in an effort to resolve any remaining  
12 disputes. Should it become necessary, the Parties may agree in writing to different deadlines  
13 for the meet-and-confer period.

14           **5.3**     In the event that Big Bold Health initiates or otherwise requests a modification  
15 under Section 5.1, and the meet and confer process leads to a joint motion or joint application  
16 for a modification of the Consent Judgment, Big Bold Health shall reimburse ERC its costs and  
17 reasonable attorney’s fees for the reasonable time spent in the meet and confer process and  
18 filing and arguing the motion or application. The inability of Big Bold Health to comply with  
19 any deadline set forth in this Consent Judgment due to an act of terrorism, fire, earthquake,  
20 civil disorders, war, or act of God that is beyond the reasonable control of Big Bold Health  
21 shall be grounds to seek modification of the deadlines set forth in this Consent Judgment  
22 pursuant to this Section 5.

23     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
24     **JUDGMENT**

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

27           **6.2**     If ERC alleges that any Covered Product fails to qualify as a Conforming  
28 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall

1 inform Big Bold Health of such nonconformance, including a copy of its test results, within  
2 ninety (90) days of ERC's receipt of the test results in question, including lot numbers, if  
3 available to ERC, and information sufficient to permit Big Bold Health to identify the Covered  
4 Products at issue. Big Bold Health shall, within thirty (30) days following such notice, provide  
5 ERC with testing information, from an independent third-party laboratory meeting the  
6 requirements of Sections 3.4.3 and 3.4.4, demonstrating Big Bold Health's compliance with the  
7 Consent Judgment. The Parties shall first attempt to resolve the matter prior to taking any  
8 further legal action.

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

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

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

17 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
18 behalf of itself and in the public interest, and Big Bold Health, and its respective officers,  
19 partners, affiliates, members, directors, owners, shareholders, employees, agents, parent  
20 companies, subsidiaries, divisions, subdivisions, suppliers, franchisees, licensors, licensees,  
21 customers (not including private label customers of Big Bold Health), suppliers,  
22 manufacturers, distributors, wholesalers, retailers, and all other upstream and downstream  
23 entities in the distribution chain of any Covered Product, and the predecessors, successors,  
24 agents, affiliates, attorneys and assigns of any of them (collectively, "Released Parties").  
25 Online third-party sellers that do not provide the Warning after being instructed or notified by  
26 Big Bold Health to do so, as outlined in Section 3.2, are not released from liability for  
27 violations of Proposition 65.

28 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all

1 claims for violations of Proposition 65 up through the Compliance Date based on exposure to  
2 lead from the Covered Products as set forth in the Notice of Violation. ERC, on behalf of itself  
3 only, hereby fully releases and discharges the Released Parties from any and all claims,  
4 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
5 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
6 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
7 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
8 Products regarding lead to and including the Compliance Date. Online third-party sellers that  
9 do not provide the Warning after being instructed or notified by Big Bold Health to do so, as  
10 outlined in Section 3.2, are not released from liability for violations of Proposition 65.

11 **8.3** ERC on its own behalf only, and Big Bold Health on its own behalf only,  
12 further waive and release any and all claims they may have against each other for all actions or  
13 statements made or undertaken in the course of seeking or opposing enforcement of  
14 Proposition 65 in connection with the Notice and Complaint up through and including the  
15 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
16 right to seek to enforce the terms of this Consent Judgment.

17 **8.4** It is the Parties intention that this Consent Judgment shall have preclusive effect  
18 such that no other actions by private enforcers, other than ERC, whether purporting to act in  
19 his, her, or its interest or the public interest shall be permitted to pursue and take any action  
20 with respect to any violation of Proposition 65 based on exposure to lead from use of the  
21 Covered Products that was alleged in this action, or that could have been brought pursuant to  
22 the Notice against Big Bold Health and the Released Parties. Big Bold Health's compliance  
23 with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Big  
24 Bold Health with regard to exposure to lead from the Covered Products.

25 **8.5** It is possible that other claims not known to the Parties, arising out of the facts  
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
27 discovered. ERC, on behalf of itself only, and Big Bold Health, on behalf of itself only,  
28 acknowledges that this Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.  
2 ERC and Big Bold Health acknowledge that the claims released in Sections 8.2 and 8.3 above  
3 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
4 any such unknown claims. California Civil Code section 1542 reads as follows:

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

11 ERC, on behalf of itself only, and Big Bold Health, on behalf of itself only, acknowledge and  
12 understand the significance and consequences of this specific waiver of California Civil Code  
13 section 1542.

14 **8.6** Big Bold Health waives any and all claims against ERC, its attorneys and other  
15 representatives, for any and all actions taken, or statements made (or those that could have  
16 been taken or made) by ERC and its attorneys and other representatives, whether in the course  
17 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this  
18 matter, and with respect to Covered Products.

19 **8.7** Compliance with the terms of this Consent Judgment shall be deemed to  
20 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
21 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

22 **8.8** Nothing in this Consent Judgment is intended to apply to any occupational or  
23 environmental exposures arising under Proposition 65, nor shall it apply to any of Big Bold  
24 Health's products other than the Covered Products.

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

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

## **10. GOVERNING LAW**

The terms and conditions of this Consent Judgment shall be governed by and construed in

1 accordance with the laws of the State of California.

2 **11. PROVISION OF NOTICE**

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

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

7 Chris Heptinstall, Executive Director, Environmental Research Center  
8 3111 Camino Del Rio North, Suite 400  
9 San Diego, CA 92108  
10 Ph: (619) 500-3090  
11 Email: chris.heptinstall@erc501c3.org

12 With a copy to:

13 Charles W. Poss  
14 Environmental Research Center, Inc.  
15 3111 Camino Del Rio North, Suite 400  
16 San Diego, CA 92108  
17 Ph: (619) 500-3090  
18 Email: charles.poss@erc501c3.org

19 **FOR BIG BOLD HEALTH, LLC; BIG BOLD HEALTH HOLDINGS, PBC; BIG BOLD  
20 HEALTH HOLDINGS, INC.:**

21 Jeffrey Bland (President)  
22 Annette Giarde (Director of Operations)  
23 Big Bold Health  
24 115 Hall Brothers Loop NW #104  
25 Bainbridge Island, WA 98110  
26 Email: jeffbland@bigboldhealth.com // annettegiarde@bigboldhealth.com

27 With a copy to:

28 Hazel Ocampo  
Greenberg Traurig LLP  
12760 High Bluff Drive, Suite 240  
San Diego, CA 92130  
Telephone: (619) 848-2515  
Email: ocampoh@gtlaw.com

29 **12. COURT APPROVAL**

30 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
31 Motion for Court Approval. The Parties shall use their best efforts to support entry of this

1 Consent Judgment.

2 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
3 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
4 prior to the hearing on the motion.

5 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
6 void and have no force or effect.

7 **13. EXECUTION AND COUNTERPARTS**

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

11 **14. DRAFTING**

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

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

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

26 **16. ENFORCEMENT**

27 ERC may, by motion or order to show cause before the Superior Court of Alameda  
28 County, enforce the terms and conditions contained in this Consent Judgment. In any successful

1 action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
2 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

3 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

20 (2) Make the findings pursuant to California Health and Safety Code section  
21 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

24 ///

25 ///

26 ///

27 ///

28 ///



1 IT IS SO STIPULATED:

2

3 Dated: 8/19/, 2024

4

5

6

7 Dated: Aug. 14, 2024

8

9

10

11

12 Dated: Aug. 14, 2024

13

14

15

16 Dated: Aug. 14, 2024

17

18

19

20

21 ///

22 ///

23 ///

24 ///

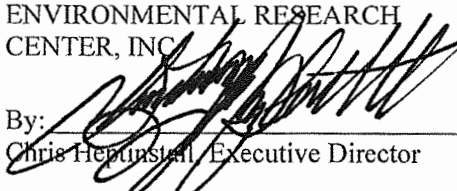
25 ///

26 ///

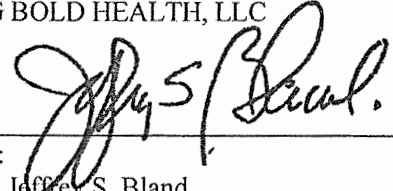
27 ///

28 ///

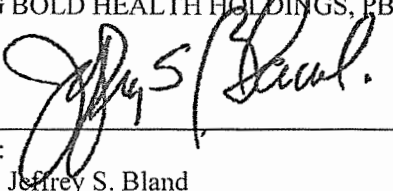
ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heptinstall, Executive Director

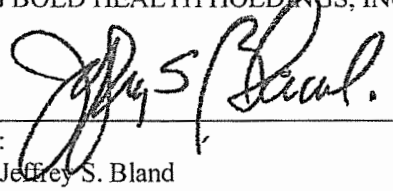
BIG BOLD HEALTH, LLC

By:   
Its: Jeffrey S. Bland

BIG BOLD HEALTH HOLDINGS, PBC

By:   
Its: Jeffrey S. Bland

BIG BOLD HEALTH HOLDINGS, INC.

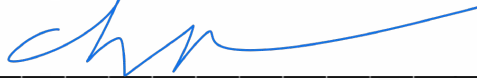
By:   
Its: Jeffrey S. Bland

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**APPROVED AS TO FORM:**


Dated: August 19, 2024

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Charles W. Poss  
In-House Counsel

Dated: August 15, 2024

GREENBERG TRAURIG LLP

By:   
Hazel Ocampo  
Attorney for Big Bold Health, LLC, Big  
Bold Health Holdings, PBC, and Big Bold  
Health Holdings, Inc.

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Judge of the Superior Court

# **EXHIBIT A**



## Environmental Research Center

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

March 7, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the 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:

**Big Bold Health, LLC**  
**Big Bold Health Holdings, PBC**  
**Big Bold Health Holdings, Inc.**

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

- 1. Big Bold Health HTB Rejuvenate Superfood French Vanilla Flavor Advanced Protein Shake Mix - Lead**
- 2. Big Bold Health Himalayan Tartary Buckwheat Flour - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 7, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



---

Charles Poss  
In-House Counsel  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Big Bold Health, LLC, Big Bold Health Holdings, PBC, and Big Bold Health Holdings, Inc. and its Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Big Bold Health, LLC, Big Bold Health Holdings, PBC, and Big Bold Health Holdings, Inc.**

I, Charles Poss, declare:

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

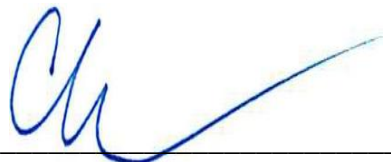
2. I am an attorney for the noticing party.

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

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

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

Dated: March 7, 2024



---

Charles Poss

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

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

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

On March 7, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Big Bold Health, LLC; Big Bold  
Health Holdings, PBC; and Big Bold  
Health Holdings, Inc.  
115 Hall Brothers Loop, Unit 104  
Bainbridge Island, WA 98110

Jeffrey Bland  
(Registered Agent for Big Bold Health, LLC)  
8911 NE Wardwell Rd  
Bainbridge Island, WA 98110

Big Bold Health Holdings, Inc.  
(Registered Agent for Big Bold Health Holdings, Inc.)  
115 Hall Brothers Loop, Unit 104  
Bainbridge Island, WA 98110

The Corporation Trust Company  
(Registered Agent for Big Bold Health  
Holdings, PBC)  
1209 N. Orange St  
Wilmington, DE 19801

On March 7, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On March 7, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

March 7, 2024

Page 5

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

James Clinchard, Assistant District Attorney  
El Dorado County  
778 Pacific Street  
Placerville, CA 95667  
EDCDAPROP65@edcda.us

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

March 7, 2024

Page 6

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

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

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

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

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

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

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

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

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

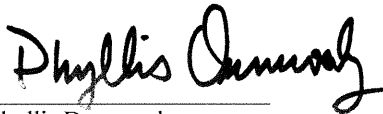
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On March 7, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** **CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on March 7, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
17300 Hwy 89  
Markleeville, CA 96120

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## APPENDIX A

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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