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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**

AMENDED [PROPOSED]
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.

5 or

6 **OPTION 2:**

7  **WARNING:** Cancer and Reproductive Harm - 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 and downstream reseller customers of Big Bold Health that do not
26 provide the Warning after being instructed or notified by Big Bold Health to do so, as outlined
27 in Section 3.2, are not released from liability for 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 and
9 downstream reseller customers of Big Bold Health that do not provide the Warning after being
10 instructed or notified by Big Bold Health to do so, as outlined in Section 3.2, are not released
11 from liability for violations of Proposition 65.

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

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

26 **8.5** It is possible that other claims not known to the Parties, arising out of the facts
27 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
28 discovered. ERC, on behalf of itself only, and Big Bold Health, on behalf of itself only,

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

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

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

13 **8.6** Big Bold Health waives any and all claims against ERC, its attorneys and other
14 representatives, for any and all actions taken, or statements made (or those that could have
15 been taken or made) by ERC and its attorneys and other representatives, whether in the course
16 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
17 matter, and with respect to Covered Products.

18 **8.7** Compliance with the terms of this Consent Judgment shall be deemed to
19 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
20 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

21 **8.8** Nothing in this Consent Judgment is intended to apply to any occupational or
22 environmental exposures arising under Proposition 65, nor shall it apply to any of Big Bold
23 Health's products other than the Covered Products.

24 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

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1 **10. GOVERNING LAW**

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

4 **11. PROVISION OF NOTICE**

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

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

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

14 With a copy to:

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

21 **FOR BIG BOLD HEALTH, LLC; BIG BOLD HEALTH HOLDINGS, PBC; BIG BOLD
22 HEALTH HOLDINGS, INC.:**

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

29 With a copy to:

30 Hazel Ocampo
31 Greenberg Traurig LLP
32 12830 El Camino Real, Suite 350
33 San Diego, CA 92130
34 Telephone: (619) 848-2515
35 Email: ocampoh@gtlaw.com

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1 **12. COURT APPROVAL**

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

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

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

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

1 **16. ENFORCEMENT**

2 ERC may, by motion or order to show cause before the Superior Court of Alameda
3 County, enforce the terms and conditions contained in this Consent Judgment. In any successful
4 action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
5 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

6 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

23 (2) Make the findings pursuant to California Health and Safety Code section
24 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

27 ///

28 ///

1 IT IS SO STIPULATED:

2

3 Dated: 9/6/, 2024

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7 Dated: Sept 4, 2024

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10

11 Dated: Sept 4, 2024

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16 Dated: Sept 4, 2024

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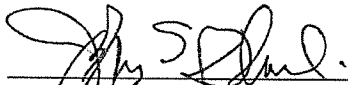
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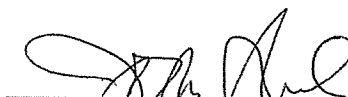
ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepinstall, Executive Director

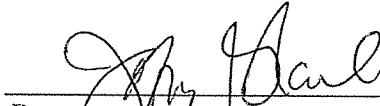
BIG BOLD HEALTH, LLC

By: 
Its: president

BIG BOLD HEALTH HOLDINGS, PBC

By: 
Its:

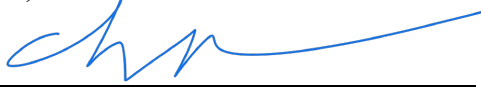
BIG BOLD HEALTH HOLDINGS, INC.

By: 
Its:

1 **APPROVED AS TO FORM:**


2
3 Dated: September 6, 2024

ENVIRONMENTAL RESEARCH
CENTER, INC.

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

8 Dated: September 11, 2024

GREENBERG TRAURIG LLP

9
10 By: 
11 Hazel Ocampo
12 Attorney for Big Bold Health, LLC, Big
13 Bold Health Holdings, PBC, and Big Bold
14 Health Holdings, Inc.

14 **ORDER AND JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18
19 Dated: _____, 2024

20 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
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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
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168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

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

Lori E. Frugoli, District Attorney
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San Rafael, CA 94903
consumer@marincounty.org

Walter W. Wall, District Attorney
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Mariposa, CA 95338
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Merced, CA 95340
Prop65@countyofmerced.com

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

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CEPD@countyofnapa.org

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Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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

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Roseville, CA 95678
Prop65@placer.ca.gov

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davidhollister@countyofplumas.com

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Riverside, CA 92501
Prop65@rivcoda.org

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

Summer Stephan, District Attorney
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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

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350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

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San Jose, CA 96113
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San Francisco, CA 94102
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Prop65DA@santacruzcounty.us

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DAConsumer.Environmental@sjcda.org

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Jeannie.Barnes@sonoma-county.org

Eric J. Dobroth, Deputy District Attorney
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edobroth@co.slo.ca.us

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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

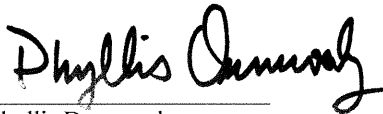
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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 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.