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

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

20 **Plaintiff,**

21 **vs.**

22 **BAREBONES VENTURES, LLC and**
23 **DOES 1-100**

24 **Defendants.**

CASE NO. 24CV081871

[PROPOSED] AMENDED
STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 1, 2024

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On July 1, 2024, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
28 Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant
to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition
65”), against Barebones Ventures, LLC (“Barebones”) and Does 1-100. In this action, ERC

1 alleges that a number of products manufactured, distributed, or sold by Barebones contain lead, a
2 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
3 consumers to this chemical at a level requiring a Proposition 65 warning. These products
4 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
5 Products”) are: (1) Bare Bones Plant-Based Soup "Cheesy" Broccoli, (2) Bare Bones Plant-
6 Based Soup Buffalo Cauliflower, (3) Bare Bones Plant-Based Soup Lentil Curry, (4) Bare Bones
7 Organic Chicken Bone Broth Low Sodium, (5) Bare Bones Organic Chicken Bone Broth, and (6)
8 Bare Bones Grass-Fed Beef Bone Broth. ERC further alleges that Barebones has distributed or sold
9 the following Covered Product that contains Perfluorooctane Sulfonate (PFOS): Bare Bones
10 Grass-Fed Beef Bone Broth (also referred to individually as “PFOS Covered Product”).

11 **1.2** Barebones contends that the amount of lead in the Covered Products is below
12 the No Significant Risk level for lead under 27 Cal. Code Regs., §25705(b)(1).

13 **1.3** Barebones contends that, even if the Bare Bones Grass-Fed Beef Bone Broth
14 contained PFOS, changes made by Barebones in the packaging of that product have eliminated the
15 potential for PFOS.

16 **1.4** ERC and Barebones are hereinafter referred to individually as a “Party” or
17 collectively as the “Parties.”

18 **1.5** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
19 causes, helping safeguard the public from health hazards by reducing the use and misuse of
20 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
21 and encouraging corporate responsibility.

22 **1.6** ERC alleges that Barebones is a business entity that has employed ten or more
23 persons at all times relevant to this action and qualifies as a “person in the course of doing
24 business” within the meaning of Proposition 65. Barebones disputes this allegation but
25 nevertheless enters into this Stipulated Consent Judgment to avoid claims, liabilities and actions
26 against Barebones and any upstream or downstream manufacturers, distributors, and sellers of the
27 Covered Products. Barebones distributes, and/or sells the Covered Products.

28 **1.7** The Complaint is based on allegations contained in ERC’s Notices of Violation

1 dated March 1, 2024 and March 14, 2024 that were served on the California Attorney General,
2 other public enforcers, and Barebones (“First and Second Notices”). True and correct copies of
3 the First and Second Notices dated March 1, 2024 and March 14, 2024 are attached hereto as
4 **Exhibits A and B** and each is incorporated herein by reference. More than 60 days have passed
5 since the First and Second Notices were served on the Attorney General, public enforcers, and
6 Barebones and no designated governmental entity has filed a Complaint against Barebones
7 with regard to the Covered Products or the alleged violations.

8 **1.8** On September 6, 2024, ERC served a Third Notice of Violation on the
9 California Attorney General, other public enforcers, and Barebones (“Third Notice”). A true
10 and correct copy of the Third Notice is attached hereto as **Exhibit C** and incorporated by
11 reference. The Parties stipulate that the Complaint be deemed amended as of November 7,
12 2024 to include the products set forth in ERC’s Third Notice. This Consent Judgment shall
13 apply to all Covered Products set forth in Paragraph 1.1, as no public enforcer chose to
14 diligently pursue the allegations set forth in ERC’s Third Notice. On November 7, 2024 more
15 than 60 days had passed since ERC’s Third Notice was served on the Attorney General, public
16 enforcers, and Barebones. The First and Second Notices and the Third Notice are hereinafter
17 collectively referred to as “Notices.”

18 **1.9** ERC’s Notices and Complaint allege that use of the Covered Products by
19 California consumers exposes them to PFOS and/or lead without first receiving clear and
20 reasonable warnings from Barebones, which is in violation of California Health and Safety
21 Code section 25249.6. Barebones denies all material allegations contained in the Notices and
22 Complaint.

23 **1.10** This [Proposed] Amended Stipulated Consent Judgment supplants and
24 supersedes the [Proposed] Stipulated Consent Judgment executed by the Parties as of
25 November 8, 2024 (the “Superseded Consent Judgment”). The Parties agree that upon the full
26 execution and delivery of this [Proposed] Amended Stipulated Consent Judgment, the
27 Superseded Consent Judgment shall be null and void and of no further force or effect. The
28 Parties have entered into this [Proposed] Amended Stipulated Consent Judgment (“Consent

1 Judgment”) in order to settle, compromise, and resolve disputed claims and thus avoid
2 prolonged and costly litigation and based on ERC’s representation that it is not presently aware
3 of any Barebones product, other than the Covered Products, that are in violation of Proposition
4 65. Nothing in this Consent Judgment nor compliance with this Consent Judgment shall
5 constitute or be construed as an admission by any of the Parties or by any of their respective
6 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
8 issue of law, or violation of law.

9 **1.11** Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
11 any current or future legal proceeding unrelated to these proceedings.

12 **1.12** The Effective Date of this Consent Judgment is the date on which it is entered
13 as a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

15 For purposes of this Consent Judgment and any further court action that may become
16 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
17 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
18 over Barebones as to the acts alleged in the Complaint, that venue is proper in Alameda County,
19 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
20 all claims up through and including the Effective Date that were or could have been asserted in
21 this action based on the facts alleged in the Notices and Complaint.

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

23 **3.1** Beginning on the dates referenced in Section 3.2, Barebones shall be
24 permanently enjoined from manufacturing for sale in the State of California, “Distributing for
25 sale into the State of California,” or directly selling in the State of California, any Covered
26 Product that exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms
27 of lead per day and/or, with respect to the PFOS Covered Product, any detectible level of
28 PFOS unless it meets the warning requirements and methods under Section 3.2. This section

1 shall not apply to any Covered Product that is already manufactured and packaged and no
2 longer in the possession of or under the control of Barebones Ventures as of the Effective Date.

3 **3.1.1** As used in this Consent Judgment, the term “Distributing for sale into
4 the State of California” shall mean to directly ship a Covered Product into California for sale in
5 California or to sell a Covered Product to a distributor that Barebones knows or has reason to
6 know will sell the Covered Product in California.

7 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
8 Level” shall be measured in micrograms, and shall be calculated using the following formula:
9 micrograms of lead per gram of product, multiplied by grams of product per serving of the
10 product (using the largest serving size appearing on the product label), multiplied by servings
11 of the product per day (using the largest number of recommended daily servings appearing on
12 the label), which equals micrograms of lead exposure per day. If the label contains no
13 recommended daily servings, then the number of recommended daily servings shall be one.

14 **3.2 Clear and Reasonable Warnings**

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

17 **OPTION 1:**

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

21 OR

22 **OPTION 2:**

23  **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov

24 OR

25 **OPTION 3:**

26 **WARNING:** Risk of [cancer from exposure to [lead] [perfluorooctane sulfonate] and]
27 reproductive harm from exposure to [lead] [perfluorooctane sulfonate]. See
28 www.P65Warnings.ca.gov/food.

1 OR

2 **OPTION 4:**

3 **WARNING:** Can expose you to [lead] [perfluorooctane sulfonate] [a carcinogen and] a
4 reproductive toxicant. See www.P65Warnings.ca.gov/food.

5 For all Warning options, the Warning shall begin either with the word “**WARNING,**” as
6 indicated above, or the words “**CA WARNING**” or “**CALIFORNIA WARNING,**” in all capital
7 letters and bold print. Barebones shall use the phrase “cancer and” in the Option 1 and Option 2
8 Warnings or “cancer from exposure to [lead] [perfluorooctane sulfonate] and” in the Option 3
9 Warning or “[lead] [perfluorooctane sulfonate] a carcinogen and” in the Option 4 Warning (each
10 phrase referred to individually as a “Cancer Phrase”) if it knows that the “Daily Lead Exposure
11 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control
12 methodology set forth in Section 3.4, if it knows that there is a detectible level of PFOS in the
13 PFOS Covered Product, or if it knows that another Proposition 65 chemical is present at a level
14 that requires a cancer warning. As identified in the brackets, the warning shall appropriately
15 reflect whether there is lead or PFOS (for the PFOS Covered Product only) present in each of the
16 Covered Products, but if there is a chemical present at a level that requires a cancer warning, the
17 chemical requiring use of the Cancer Phrase in the Warning shall always be identified.

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

25 Beginning on the Effective Date, for any Covered Product sold over the internet by or for
26 Barebones, the Warning shall appear on the primary product display page or checkout page when
27 a California delivery address is indicated for any purchase of any Covered Product (the “Online
28 Warning Method”). An asterisk or other identifying method must be utilized to identify which

1 products on the checkout page are subject to the Warning. The Warning provided via the Online
2 Warning Method may be displayed by a hyperlink, using either the word “**WARNING,**” or the
3 words “**CA WARNING**” or “**CALIFORNIA WARNING,**” in all capital and bold letters, so
4 long as the hyperlink goes directly to a page prominently displaying the Warning without content
5 that detracts from the Warning. A warning is not prominently displayed if the purchaser must
6 search for it in the general content of the website. Beginning 60 days after the Effective Date (the
7 “Label Warning Method Compliance Date”), the Warning shall be securely affixed to or printed
8 upon the label of each Covered Product (the “Label Warning Method”), and it must be set off
9 from other surrounding information and enclosed in a box. Barebone’s compliance with the Label
10 Warning Method shall be in addition to its continued compliance with the Online Warning
11 Method.

12 If a Covered Product is being sold by an online third-party seller or downstream reseller
13 customer (collectively referred to as “Third-Party Seller(s)”), who are subject to Proposition 65
14 and known to and authorized to sell such Covered Product by Barebones, and Barebones cannot
15 itself post the warning on the authorized Third-Party Seller’s website because Barebones lacks
16 control over such authorized Third-Party Seller’s website, then Barebones must notify the
17 authorized Third-Party Seller and/or its authorized agent, in writing, of the authorized Third-Party
18 Seller’s duty to provide an internet warning as part of the condition of sale of the Covered
19 Product. Barebones shall comply with this obligation to notify authorized Third-Party Sellers by
20 complying with 27 C.C.R. § 25600.2 (2025) including, but not limited to, by providing the
21 information required by 27 C.C.R. § 25600.2 (2025), including the warning language required by
22 this Consent Judgment for Covered Products sold on the internet, to any such authorized Third-
23 Party Seller (or its authorized agent). The written notice required by this Section shall instruct the
24 Third-Party Seller that it is responsible for providing the Warning on its website for Covered
25 Products sold over the internet to California consumers and that the Warning shall be provided
26 with such conspicuousness, as compared with other words, statements or designs, as to render the
27 Warning likely to be seen, read, and understood by an ordinary individual prior to sale.
28 Confirmation of receipt of the written notice and any renewed written notices must be received

1 electronically or in writing from the Third Party Seller, or its authorized agent, to which the
2 manufacturer, producer, packager, importer, supplier, or distributor of the product sent the written
3 notice. If Barebones is unable to obtain such confirmation of receipt, Barebones shall confirm
4 delivery of the notice and retain such confirmation of delivery in written or electronic form for
5 one year.

6 The Warning shall be at least the same size as the largest of any other health or safety
7 warnings also appearing on the website or on the label and in no event in a type size smaller than
8 6-point type. The Warning may contain information that is supplemental to the content required
9 by this Section 3.2 only to the extent that it identifies the source of the exposure or provides
10 information on how to avoid or reduce exposure to the identified chemical or chemicals. No
11 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
12 average lay person shall accompany the Warning, though Barebones is not prohibited from
13 making such statements, if not false, elsewhere on the label or its website.

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

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

23 **3.3 Conforming Covered Products**

24 With respect to lead, a Conforming Covered Product is a Covered Product for which the
25 “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by
26 the exposure methodology set forth in Section 3.1.2 and the quality control methodology
27 described in Section 3.4, and that is not known by Barebones to contain other chemicals that
28 violate Proposition 65’s safe harbor thresholds. A Conforming PFOS Covered Product is a PFOS

1 Covered Product for which there is no detectible level of PFOS as determined by the quality
2 control methodology described in Section 3.4, and that is not known by Barebones to contain
3 other chemicals that violate Proposition 65’s safe harbor thresholds.

4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning within one year of the Effective Date, Barebones shall
6 arrange for lead testing of the Covered Products and PFOS testing of the PFOS Covered
7 Product at least once a year for a minimum of five consecutive years by arranging for testing of
8 three (3) randomly selected samples of each of the Covered Products, in the form intended for
9 sale to the end-user, which Barebones intends to sell or is manufacturing for sale in California,
10 directly selling to a consumer in California or “Distributing for sale into the State of
11 California.” If tests conducted pursuant to this Section demonstrate that no Warning is required
12 for a Covered Product during each of five consecutive years, then the testing requirements of
13 this Section will no longer be required as to that Covered Product. However, if during or after
14 the five-year testing period, Barebones changes ingredient suppliers for any of the Covered
15 Products and/or reformulates any of the Covered Products, Barebones shall test that Covered
16 Product annually for at least four (4) consecutive years after such change is made.

17 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
18 lead detection result of the three (3) randomly selected samples of the Covered Products will
19 be controlling.

20 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
21 laboratory method that complies with the performance and quality control factors appropriate
22 for the method used, including limit of detection and limit of quantification, sensitivity,
23 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
24 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
25 mg/kg for lead and, for the PFOS Covered Product, testing shall be conducted by Symbio
26 Laboratories using the lowest method detection limit that can reasonably and reliably be
27 achieved for PFOS using method 537.1 MOD.

28 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an

1 independent third party laboratory certified by the California Environmental Laboratory
2 Accreditation Program or an independent third-party laboratory that is registered with the
3 United States Food & Drug Administration.

4 **3.4.5** Nothing in this Consent Judgment shall limit Barebones' ability to
5 conduct, or require that others conduct, additional testing of the Covered Products, including
6 the raw materials used in their manufacture.

7 **3.4.6** Within thirty (30) days of ERC's written request, Barebones shall
8 deliver lab reports obtained pursuant to Section 3.4 to ERC. Barebones shall retain all test
9 results and documentation for a period of five years from the date of each test.

10 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
11 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
12 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this
13 Consent Judgment is intended by either Party to set a precedent for the level of lead, PFOS, or
14 other chemicals that is permissible in consumer products under Proposition 65.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement
17 payments, attorney's fees, and costs, Barebones shall make a total payment of \$70,000.00
18 ("Total Settlement Amount") to ERC in three periodic payments (the "Periodic Payments")
19 according to the following payment schedule ("Due Dates"):

- 20 • Payment 1 -- \$25,000.00 within 5 days of the Effective Date
- 21 • Payment 2 -- \$25,000.00 within 35 days of the Effective Date
- 22 • Payment 3 -- \$20,000.00 within 65 days of the Effective Date.

23 Barebones shall make these Periodic Payments by wire transfer to ERC's account, for
24 which ERC will give Barebones the necessary account information. The Total Settlement
25 Amount shall be apportioned as follows:

26 **4.2** \$14,500.00 shall be considered a civil penalty pursuant to California Health and
27 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$10,875.00) of the civil penalty to
28 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe

1 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
2 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,625.00) of the civil penalty.

3 **4.3** \$5,435.78 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 **4.4** \$10,871.99 shall be distributed to ERC as an Additional Settlement Payment
6 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to
7 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities
8 that address the same public harm as allegedly caused by Defendant in this matter. These
9 activities are detailed below and support ERC’s overarching goal of reducing and/or
10 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s
11 activities have had, and will continue to have, a direct and primary effect within the State of
12 California because California consumers will be benefitted by the reduction and/or elimination
13 of exposure to lead and PFOS in dietary supplements and/or by providing clear and reasonable
14 warnings to California consumers prior to ingestion of the products.

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

1 supplement products; and (3) “GOT LEAD” PROGRAM (up to 5%): maintaining ERC’s “Got
2 Lead?” Program which reduces the numbers of contaminated products that reach California
3 consumers by providing access to free testing for lead in dietary supplement products (Products
4 submitted to the program are screened for ingredients which are suspected to be contaminated,
5 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
6 the results shared with the consumer that submitted the product).

7 ERC shall be fully accountable in that it will maintain adequate records to document
8 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
9 are being spent only for the proper, designated purposes described in this Consent Judgment.

10 ERC shall provide the Attorney General, within thirty days of any request, copies of
11 documentation demonstrating how such funds have been spent.

12 **4.5** \$39,192.23 shall be distributed to ERC for its in-house legal fees. Except as
13 explicitly provided herein, each Party shall bear its own fees and costs.

14 **4.6** In the event that Barebones fails to remit, in full, any of the Periodic Payments
15 owed under Section 4.1 of this Consent Judgment on or before the applicable Due Date,
16 Barebones shall be deemed to be in material breach of its obligations under this Consent
17 Judgment. ERC shall provide written notice of the delinquency to Barebones via electronic
18 mail. If Barebones fails to deliver the delinquent payment, in full, within five (5) days from
19 the written notice, the Total Settlement Amount, less any amounts previously paid pursuant to
20 Section 4.1, shall be immediately due and owing and shall accrue interest at the statutory
21 judgment interest rate provided in the California Code of Civil Procedure section 685.010.
22 Additionally, Barebones agrees to pay ERC’s reasonable attorney’s fees and costs for any
23 efforts to collect the payment due under this Consent Judgment.

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

13 **5.3** In the event that Barebones initiates or otherwise requests a modification under
14 Section 5.1, and the meet and confer process leads to a joint motion or joint application for a
15 modification of the Consent Judgment, Barebones shall reimburse ERC its costs and reasonable
16 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the
17 motion or application.

18 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
19 **JUDGMENT**

20 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
21 terminate this Consent Judgment.

22 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
23 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
24 inform Barebones in a reasonably prompt manner of its test results, including information
25 sufficient to permit Barebones to identify the Covered Products at issue. Barebones shall,
26 within thirty (30) days following such notice, provide ERC with testing information, from an
27 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
28 demonstrating Barebones’ compliance with the Consent Judgment. The Parties shall first

1 attempt to resolve the matter prior to ERC taking any further legal action.

2 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

10 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
11 behalf of itself and in the public interest, and Barebones and its respective officers, directors,
12 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
13 franchisees, licensees, customers (not including private label customers of Barebones),
14 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
15 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
16 of them (collectively, “Released Parties”).

17 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
18 claims for violations of Proposition 65 up through the Effective Date or the Label Warning
19 Method Compliance Date, as applicable, based on exposure to PFOS in the PFOS Covered
20 Product and lead in the Covered Products as set forth in the Notices of Violation. ERC, on
21 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
22 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
23 expenses asserted, or that could have been asserted from the handling, use, or consumption of
24 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
25 regulations arising from the failure to provide Proposition 65 warnings on the Covered
26 Products regarding lead and on the PFOS Covered Product regarding PFOS up to and
27 including the Effective Date or the Label Warning Method Compliance Date, as applicable.
28 However, Third-Party Sellers that do not provide the Warning within a reasonable time, but in

1 no event more than 60 days, after being instructed or notified by Barebones to do so, as
2 outlined in Section 3.2, are not released from liability for violations of Proposition 65.

3 **8.3** ERC on its own behalf only, and Barebones on its own behalf only, further
4 waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of
6 Proposition 65 in connection with the Notices and Complaint up through and including the
7 Effective Date or the Label Warning Method Compliance Date, as applicable, provided,
8 however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the
9 terms of this Consent Judgment. However, Third-Party Sellers that do not provide the
10 Warning within a reasonable time, but in no event more than 60 days, after being instructed or
11 notified by Barebones to do so, as outlined in Section 3.2, are not released from liability for
12 violations of Proposition 65.

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

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

26 ERC on behalf of itself only, and Barebones on behalf of itself only, acknowledge and
27 understand the significance and consequences of this specific waiver of California Civil Code
28 section 1542.

1 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
3 exposures to lead in the Covered Products and/or PFOS in the PFOS Covered Product as set
4 forth in the Notices and Complaint.

5 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
6 environmental exposures arising under Proposition 65, nor shall it apply to any of Barebones'
7 products other than the Covered Products.

8 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12 **10. GOVERNING LAW**

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

15 **11. PROVISION OF NOTICE**

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

19 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
20 Chris Heptinstall, Executive Director, Environmental Research Center
21 3111 Camino Del Rio North, Suite 400
22 San Diego, CA 92108
23 Ph: (619) 500-3090
24 Email: chris.heptinstall@erc501c3.org

25 With a copy to:
26 Charles W. Poss
27 Environmental Research Center, Inc.
28 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

///

1 **FOR BAREBONES VENTURES, LLC:**

2 Katherine Harvey
3 Barebones Ventures, LLC
4 5065 Green Spruce Dr.
5 Sylvania, OH 43560
6 Ph: (619) 602-0133
7 Email: kate@barebonesbroth.com

8 With a copy to:
9 Sean M. Sherlock
10 Snell & Wilmer LLP
11 600 Anton Blvd, Suite 1400
12 Costa Mesa, CA 92626
13 Telephone: (714) 427-7000
14 Email: ssherlock@swlaw.com

15 **12. COURT APPROVAL**

16 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
17 Motion for Court Approval. The Parties shall make good faith efforts to support entry of this
18 Consent Judgment.

19 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
20 the Parties shall meet and confer in good faith to attempt to resolve the concern in a timely
21 manner, and if possible prior to the hearing on the motion. Nothing herein shall obligate either
22 Party to modify this Consent Judgment in a manner that will address the concern to the
23 satisfaction of the Attorney General.

24 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
25 void and have no force or effect.

26 **13. EXECUTION AND COUNTERPARTS**

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

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for
each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms

1 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
2 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
3 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
4 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
5 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
6 equally in the preparation and drafting of this Consent Judgment.

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

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

13 **16. ENFORCEMENT**

14 ERC may, by motion or order to show cause before the Superior Court of Alameda
15 County, enforce the terms and conditions contained in this Consent Judgment. In any action
16 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
17 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
18 To the extent the failure to comply with the Consent Judgment constitutes a violation of
19 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
20 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
21 provided by law for failure to comply with Proposition 65 or other laws. In any proceeding to
22 enforce this Consent Judgment the prevailing party may seek its costs of suit including
23 reasonable attorneys' fees incurred in the proceeding.

24 **17. FORCE MAJEURE**

25 Neither Party shall be in default of its obligations under this Consent Judgment due to
26 any act of God, war, fire, earthquake, flood, catastrophic windstorm, pandemic, public health
27 crisis, natural catastrophe, labor strike, criminal acts, civil disturbance, vandalism, sabotage,
28 terrorism, restraint by court order or public authority, or inability to obtain necessary

1 authorizations or approvals from a governmental agency that prohibits the Party from
2 conducting its business (collectively referred to as “Crisis Event(s)”) so long as the applicable
3 Crisis Event(s) is/are beyond the reasonable control of the Party and directly impact(s) the
4 Party in such a way as to limit or prevent its ability to perform or abide by its obligations under
5 the Consent Judgment.

6 **18. ENTIRE AGREEMENT, AUTHORIZATION**

7 **18.1** 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 **18.2** 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 **19. 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.

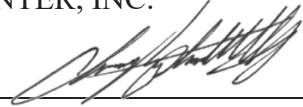
27 ///

28 ///

1 **IT IS SO STIPULATED:**

2
3 Dated: February 12, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: 
Chris Heptinstall, Executive Director

6
7 Dated: Feb 11, 2025


BAREBONES VENTURES, LLC

8
9 Katherine Harvey
10
11 By: Katherine Harvey
Its: CEO

12
13 **APPROVED AS TO FORM:**

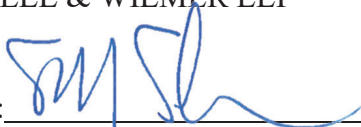
14
15 Dated: February 12, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

16
17 By: 
18 Charles W. Poss
19 In-House Counsel

20 Dated: February 11, 2025

SNELL & WILMER LLP

21
22 By: 
23 Sean M. Sherlock
24 Attorney for Barebones Ventures, LLC
25
26
27
28

[PROPOSED] ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2025

Judge of the Superior Court

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Exhibit A



Environmental Research Center

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

March 1, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Barebones Ventures, LLC

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. Bare Bones Plant-Based Soup "Cheesy" Broccoli - Lead**
- 2. Bare Bones Plant-Based Soup Buffalo Cauliflower - Lead**
- 3. Bare Bones Plant-Based Soup Lentil Curry - 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 1, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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 Barebones Ventures, LLC 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 Barebones Ventures, LLC

I, Charles Poss, declare:

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

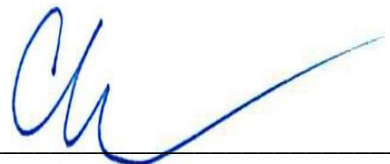
2. I am an attorney for the noticing party.

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

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

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

Dated: March 1, 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 1, 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
Barebones Ventures, LLC
4456 Vandever Ave, Ste 6
San Diego, CA 92120

Corporation Service Company
(Registered Agent for Barebones Ventures, LLC)
251 Little Falls Dr
Wilmington, DE 19808

Current President or CEO
Barebones Ventures, LLC
5065 Green Spruce Dr
Sylvania, OH 43560

Katherine Harvey
(Registered Agent for Barebones Ventures, LLC)
1362 Crestwood Rd
Toledo, OH 43612

Current President or CEO
Barebones Ventures, LLC
225 E Main St, Ste 204
Medford, OR 97501

Katherine Harvey
(Registered Agent for Barebones Ventures, LLC)
225 E Main St, Ste 204
Medford, OR 97501

On March 1, 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 1, 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 1, 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 1, 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, 16th 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, 4th 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 1, 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 1, 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.

Exhibit B



Environmental Research Center

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

March 14, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Barebones Ventures, LLC

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. Bare Bones Organic Chicken Bone Broth Low Sodium - Lead**
- 2. Bare Bones Organic Chicken Bone Broth - Lead**
- 3. Bare Bones Grass-Fed Beef Bone Broth - 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.

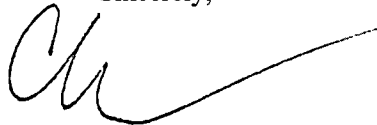
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 14, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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 Barebones Ventures, LLC 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 Barebones Ventures, LLC

I, Charles Poss, declare:

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


2. I am an attorney for the noticing party.

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

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

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

Dated: March 14, 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 14, 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
Barebones Ventures, LLC
4456 Vandever Ave, Ste 6
San Diego, CA 92120

Corporation Service Company
(Registered Agent for Barebones Ventures, LLC)
251 Little Falls Dr
Wilmington, DE 19808

Current President or CEO
Barebones Ventures, LLC
5065 Green Spruce Dr
Sylvania, OH 43560

Katherine Harvey
(Registered Agent for Barebones Ventures, LLC)
1362 Crestwood Rd
Toledo, OH 43612

Current President or CEO
Barebones Ventures, LLC
225 E Main St, Ste 204
Medford, OR 97501

Katherine Harvey
(Registered Agent for Barebones Ventures, LLC)
225 E Main St, Ste 204
Medford, OR 97501

On March 14, 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 14, 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 14, 2024

Page 5

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

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

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2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdacda.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 14, 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, 16th 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
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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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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, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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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

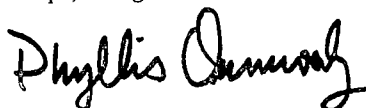
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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 14, 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 14, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 14, 2024

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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.

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

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

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

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

Exhibit C



Environmental Research Center

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

September 6, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Barebones Ventures, LLC

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

- **Bare Bones Grass-Fed Beef Bone Broth - Perfluorooctane Sulfonate (PFOS)**

On November 10, 2017, the State of California officially listed Perfluorooctane Sulfonate (PFOS) as a chemical known to cause developmental toxicity. On December 24, 2021, the State of California officially listed Perfluorooctane Sulfonate (PFOS) as a chemical known to cause cancer.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least September 6, 2021, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall the identified product so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for product sold in the future while reformulating such product to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed product, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

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 Barebones Ventures, LLC and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Barebones Ventures, LLC

I, Charles Poss, declare:

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

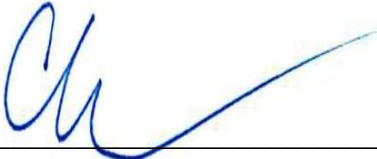
2. I am an attorney for the noticing party.

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

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

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

Dated: September 6, 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 September 6, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY” were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below, through its attorney pursuant to agreement:

Barebones Ventures, LLC
c/o Sean M. Sherlock
Snell & Wilmer L.L.P.
600 Anton Blvd, Ste 1400
Costa Mesa, CA 92626
Email: ssherlock@swlaw.com

On September 6, 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 September 6, 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

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

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

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

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

September 6, 2024

Page 5

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San Rafael, CA 94903
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Prop65@countyofmerced.com

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Prop65@placer.ca.gov

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SanDiegoDAProp65@sdca.org

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

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

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

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

September 6, 2024

Page 6

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Jeannie.Barnes@sonoma-county.org

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Prop65@co.tulare.ca.us

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

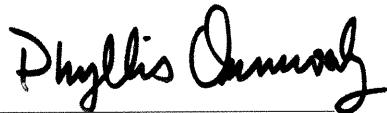
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On September 6, 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 September 6, 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
300 South G Street, Ste 300
Madera, CA 93637

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

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

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

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

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

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

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

District Attorney, Sierra
County
Post Office Box 457
100 Courthouse Square, 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.