

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
)
Bear Down Brands, LLC dba Pure Enrichment ) File No.: EB-SED-17-00024115
) NAL/Acct. No.: 201832100007
) FRN: 0027130327

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 30, 2018

Released: May 30, 2018

By the Commission: Commissioner O’Rielly issuing a separate statement.

I. INTRODUCTION

1. We propose a penalty of \$590,380 against Bear Down Brands, LLC, doing business as Pure Enrichment (Pure Enrichment or Company), for marketing noncompliant radio frequency devices in apparent violation of the Federal Communications Commission’s (Commission or FCC) equipment marketing rules. Specifically, Pure Enrichment marketed 14 models of consumer-grade electronic personal hygiene and wellness devices that were apparently noncompliant because they lacked proper equipment authorization, user manual disclosures, and/or FCC labels. Even after becoming aware of the apparent violations, Pure Enrichment continued to market the 14 models while it took corrective measures. Pure Enrichment apparently achieved compliance for 13 of the 14 models as of February 15, 2018, but continues to market one noncompliant model that lacks the proper user manual disclosures and FCC labeling in apparent violation of the Commission’s rules.

2. As discussed below, Pure Enrichment apparently willfully and repeatedly violated Section 302(b) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Sections 2.803(b)(2), 15.101(a), 15.105(b), 15.19(a)(3), 18.203(a), 18.213 and 18.209(b) of the Commission’s rules in effect at the time of the violations, including the violations that occurred in the year preceding release of this Notice of Apparent Liability (NAL).<sup>2</sup> We take this action today as part of our duty to ensure that radio frequency devices are marketed in accordance with the Commission’s rules.

<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 CFR §§ 2.803(b)(2), 15.101(a), 15.105(b), 15.19(a)(3), 18.203(a), 18.213, 18.209(b) (2017). We note that, in an order released on July 14, 2017, the requirements under Sections 2.803(b)(2), 15.101(a), 15.19(a)(3), 18.203(a), and 18.209(b) of the Commission’s rules were modified effective November 2, 2017, as published in the Federal Register. See Amendment of Parts 0, 1, 2, 15 and 18 of the Commission’s Rules Regarding Authorization of Radiofrequency Equipment, First Report and Order, 32 FCC Rcd 8746 (Jul. 14, 2017) (2017 Authorization of Radiofrequency Equipment Report and Order) Authorization of Radiofrequency Equipment, 82 Fed. Reg. 50820, 50825, 50830, 50832, 50834 (Nov. 2, 2017). The rulemaking, among other things, consolidated two equipment authorization processes, Declaration of Conformity (DoC) and Verification into Supplier’s Declaration of Conformity (SDoC) authorization and eliminated the requirement for displaying the FCC logo for all equipment approved under the SDoC. Because the violations at issue occurred before the rule modifications became effective and none of the devices were approved under the SDoC, the rule changes have no bearing on the current matter. Thus, unless indicated otherwise, the rule sections referred to throughout this decision refer to the rules in effect prior to November 2, 2017.

## II. BACKGROUND

3. Bear Down Brands, LLC is a Delaware limited liability company.<sup>3</sup> Pure Enrichment is a trade name of Bear Down Brands, LLC, which refers to itself as a “leading manufacturer of premium home, health, and personal care products,”<sup>4</sup> and which markets and imports branded home, health and wellness products. Its products are sold online and at brick-and-mortar retail establishments,<sup>5</sup> and include ultrasonic humidifiers, air purifiers, diffusers, electronic stimulator massagers, and personal care products such as hair and nail trimmers, many of which are subject to the Commission’s radio frequency regulations.<sup>6</sup> Bear Down Brands, LLC is a fast-growing company, with gross revenues of \$34.4 million in 2016.<sup>7</sup>

4. In March 2017, the FCC received a complaint that Pure Enrichment was marketing humidifiers that were not compliant with FCC requirements. Specifically, the complaint alleged that certain humidifiers marketed by Pure Enrichment had no identification showing whether the model was tested and compliant with the FCC requirements. The complaint noted that the humidifiers use an ultrasonic disc that oscillates at a high frequency to create fine water particles to be dispersed into the air. According to the complaint, the electronic circuits that control these humidifiers can put out radio frequency emissions that may interfere with other appliances if not properly tested under the Commission’s rules.

5. On May 26, 2017, the Enforcement Bureau’s (Bureau) Spectrum Enforcement Division issued a Letter of Inquiry (LOI)<sup>8</sup> to Pure Enrichment, which directed the Company to submit a sworn written response to questions about its marketing of potentially noncompliant humidifiers, as well as other radio frequency devices.<sup>9</sup> Pure Enrichment responded on June 26, 2017,<sup>10</sup> with subsequent responses on

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<sup>3</sup> This investigation was initially conducted against Bear Down Consulting dba Pure Enrichment, a California corporation. Bear Down Consulting was converted into a Delaware limited liability company called Bear Down Brands, LLC on September 27, 2017. See Letter from David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel for Bear Down Brands, LLC, to Pamela D. Hairston, Special Counsel, Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 24, 2017) (on file in EB-SED-17-00024115).

<sup>4</sup> See Pure Enrichment, Who We Are. Why We’re Here, <http://pureenrichment.com/about-us/> (last visited on Feb. 20, 2018); see also LOI Response at 1 (Pure Enrichment is a trade name for the company now known as Bear Down Brands, LLC).

<sup>5</sup> See Household Durables: Company Overview of Bear Down Brands, LLC Snapshot, <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=541391508> (last visited Mar. 9, 2018). Unintentional radiators are discussed, *infra*, at paragraph III.A.1.

<sup>6</sup> See LOI Response at 3-4. Pure Enrichment’s products are unintentional radiators, which are discussed, *infra*, at paragraph III.A.1.

<sup>7</sup> According to various publicly available sources, Bear Down Brands, LLC has launched more than 200 products since its 2011 inception and is ranked No. 405 on Inc. Magazine’s 2017 “Inc. 5,000 Fastest Growing Private Companies” with 1,080 percent three-year growth and 2016 revenue of \$34.4 million, surpassing Bear Down Brands, LLC’s prior 549 ranking in 2016 which reflected 2015 revenue of \$16.9 million and growth of 706.15 percent. Andrea Popa, “Intrepid Advises Bear Down Brands on its Growth Investment with Topspin Partners,” <http://www.prweb.com/releases/2017/11/prweb14872907.htm> (last visited Mar. 8, 2018); see also Inc., “The Inc. 5000 2017: The Full List,” <https://www.inc.com/profile/bear-down-consulting> (last visited Mar.8, 2018).

<sup>8</sup> Pure Enrichment is the importer of the devices that require equipment authorization and thus is the responsible party for compliance with the applicable equipment marketing rules. See 47 CFR § 2.909(b)-(c).

<sup>9</sup> See Letter from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC to Mathew Weiss, Vice President, Bear Down Consulting dba Pure Enrichment (May 26, 2017) (on file in EB-SED-17-00024115). EB also sent supplemental LOI inquiries. See E-mail from Kathy Harvey, Spectrum Enforcement Division, Enforcement Bureau, FCC, to David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel to Pure Enrichment, (June 28, 2017, 18:57 EDT) (June 28 Supplemental LOI); E-mail from Pamela D. Hairston, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau, FCC, to David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel to Pure Enrichment, (Aug. 25, 2017, 17:17 EDT) (August 25 Supplemental LOI); E-mail

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July 5, 2017, September 11, 2017, February 7, 2018, March 20, 2018, and April 4, 2018.<sup>11</sup> On March 27, 2018, Pure Enrichment filed an amended response, superseding the February 7 and March 20 responses.<sup>12</sup>

6. In its LOI Response and supplemental responses, and as summarized in Appendices A and B, Pure Enrichment provided a list of the apparently noncompliant Part 15 and Part 18 radio frequency devices it marketed and imported into the United States, as well as information about its sales of such noncompliant devices.<sup>13</sup> Pure Enrichment stated that it initially became aware that it was marketing unauthorized models upon receipt of the LOI.<sup>14</sup> Pure Enrichment also stated that it initially believed it did not need authorization for some models, but scheduled testing immediately “once it became clear that authorization was needed.”<sup>15</sup> Pure Enrichment’s response further revealed that, for a period spanning up to three years, it marketed five models that lacked proper authorization as required under Parts 15 and Part 18 of the Commission’s rules within the last year.<sup>16</sup>

7. Pure Enrichment also admitted that it failed to comply with the labeling and user manual disclosure requirements for certain models.<sup>17</sup> Pure Enrichment stated that it made requests to the overseas

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from Pamera D. Hairston, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau, FCC, to David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel to Pure Enrichment, (Jan. 29, 2018, 17:36 EST) (January 29 Supplemental LOI); E-mail from Pamera D. Hairston, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau, FCC, to David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel to Pure Enrichment, (Mar.15, 2018, 18:05 EST) (March 15 Supplemental LOI) (all on file in EB-SED-17-00024115).

<sup>10</sup> See Letter from David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel to Pure Enrichment, to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau (June 26, 2017) (LOI Response) (on file in EB-SED-17-00024115).

<sup>11</sup> See E-mail from Timothy J. Cooney, Esq. and David H. Solomon, Esq., Counsel to Pure Enrichment, to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau (July 5, 2017, 17:33 EDT) (July 5 Supplemental LOI Response); E-mail from Timothy J. Cooney, Esq. and David H. Solomon, Esq., Counsel to Pure Enrichment, to Pamera D. Hairston, Special Counsel, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 11, 2017, 15:02 EDT) (September 11 Supplemental LOI Response); E-mail from Timothy J. Cooney, Esq. and David H. Solomon, Esq., Counsel to Pure Enrichment to Pamera D. Hairston, Special Counsel, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 7, 2018, 14:43 EST) (February 7 Supplemental LOI Response); E-mail from Timothy J. Cooney, Esq. and David H. Solomon, Esq., Counsel to Pure Enrichment, to Pamera D. Hairston, Special Counsel, Spectrum Enforcement Bureau (Mar. 20, 2018; 14:13 EDT) (March 20 Supplemental LOI Response); E-mail from Timothy J. Cooney, Esq. and David H. Solomon, Esq., Counsel to Pure Enrichment, to Pamera D. Hairston, Special Counsel, Spectrum Enforcement Division, FCC Enforcement Bureau, (Mar. 27, 2018, 13:20 EST) (March 27 Supplemental LOI); Letter from Timothy J. Cooney, Esq. and David H. Solomon, Esq., Counsel to Pure Enrichment, to Pamera D. Hairston, Special Counsel, Spectrum Enforcement Division, FCC Enforcement Bureau (Apr. 4, 2018) (April 4 Letter) (all on file in EB-SED-17-00024115).

<sup>12</sup> See E-mail from Timothy J. Cooney, Esq. and David H. Solomon, Esq., Counsel to Pure Enrichment, to Pamera D. Hairston, Special Counsel, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 27, 2018; 13:20 EDT) (March 27 Supplemental LOI Response) (on file in EB-SED-17-00024115).

<sup>13</sup> See LOI Response at 5; see also Appendix A (incorporated herein by this reference).

<sup>14</sup> See July 5 Supplemental LOI Response at 1.

<sup>15</sup> See LOI Response at 11. Pure Enrichment stated that, based on previous information from its various overseas suppliers, internal research and market research it believed that it did not need authorization for some products. For example, it believed from its supplier that the PEHUMIDIF was exempt because it is a humidifier and the OET Knowledge Database (KDB) Publication No. 772105 lists humidifiers as exempt, but subsequent research revealed that because of the ultrasonic nature of this product, it required approval. *Id.*

<sup>16</sup> See LOI Response at 5, 10-11. Pure Enrichment states it obtained authorization for two of the five models in May 2017 and the remaining two in June 2017. See LOI Response at 10-11; see also Appendix B.

<sup>17</sup> Pure Enrichment stated in its LOI Response that the labels were “being updated.” See LOI Response at 12, 15-16.

contract manufacturers of the models at issue here to update labels and manuals on a staggered basis between June and August 2017 as noted in Appendix B and incorporated herein.<sup>18</sup> Pure Enrichment indicated that the admitted deficiencies in the labeling and user manuals, including for models authorized prior to receipt of the LOI, would be remedied in “newly manufactured units.”<sup>19</sup> It appears, however, that Pure Enrichment, did not correct the label and manual for model PEHUMINI (an ultrasonic humidifier) until February 2018.<sup>20</sup> For the model PESADLIT (an energy lamp), Pure Enrichment indicated that it did not ask the contract manufacturer to correct the labeling and user manual disclosure because the model was discontinued, but Pure Enrichment apparently continues to market the model.<sup>21</sup>

8. Finally, based on information provided by Pure Enrichment, the Company marketed at least [REDACTED] units of the 14 noncompliant models with gross revenue of at least [REDACTED] within a year of the release date of this NAL.<sup>22</sup>

<sup>18</sup> Specifically, Pure Enrichment indicated that it contacted the contract manufacturers for 13 of the 14 models, requesting correction to the user manuals and labels. See September 11 Supplemental LOI Response. Pure Enrichment did not contact the manufacturer of the PESADLIT because it was discontinuing the model. See September 11 Supplemental LOI Response at Attachment.

<sup>19</sup> In its September 11 Supplemental LOI Response, Pure Enrichment stated that it sent instructions to its overseas contract manufacturers between June 2, 2017 and August 23, 2017, to update the labeling and user manuals when there was an open order with the contract manufacturer or when the next order was placed. See September 11 Supplemental LOI Response; Appendix B. In some cases, however, Pure Enrichment stated that it did not need to place an order with the manufacturer for months and that its third-party logistics providers continued to sell devices “as is.” See September 11 Supplemental LOI Response.

<sup>20</sup> Despite receiving notice of this investigation through receipt of the May 2017 LOI, Pure Enrichment admitted in February 2018, that, because it did not reorder after contacting the contract manufacturer to request labeling and user manual disclosures, it continued to market the PEHUMINI model without the labels and user manual disclosures via [REDACTED] as well as the Pure Enrichment website until it repackaged the remaining inventory on February 15, 2018. See March 20 Supplemental LOI Response at 1.

<sup>21</sup> In its September 11 Supplemental LOI Response, [REDACTED] September 11 Supplemental Response. For one model, PESADLIT, Pure Enrichment stated that it made no request to update the label and manual because the model was discontinued, [REDACTED] for June 2017 through August 2017. See September 11 Supplemental LOI Response at [REDACTED]. The PESADLIT also still appears on Pure Enrichment’s website and is marketed on Amazon by SKUniverse which is another brand name for Bear Down Brands, LLC. See <http://pureenrichment.com/product/purebliss-energy-lamp/> (last visited Mar. 21, 2018); see also Amazon.com, PureBliss Energy Lamp, ASIN: B01N073N0N, <http://a.co/88hvVpp> (last visited Apr. 25, 2018). With respect to the model PEHUMINI, marketed as [REDACTED] by Pure Enrichment to customers of [REDACTED] Pure Enrichment admitted in response to the January 29 Supplemental LOI that “[s]ales of existing inventory up to and including September 7, 2018 [REDACTED] did not comply with the Part 18 user manual/packaging rules.” See March 27 Supplemental LOI Response at 4. Stating that it does not have visibility into sales via [REDACTED], Pure Enrichment only knows when [REDACTED] stopped selling the noncompliant model. See *id.* at 3. [REDACTED] See *id.* at 1. Pure Enrichment also indicated that, although it made the request with the manufacturer for corrections in August 2017, Pure Enrichment subsequently did not reorder the PEHUMINI. Thus, Pure Enrichment, along with its [REDACTED] marketed the noncompliant PEHUMINI until Pure Enrichment repackaged inventory on February 15, 2018. See *id.* at 4.

<sup>22</sup> See Appendix A which sets forth the number of units sold by Pure Enrichment and the gross revenue from January 2016 –August 2017, [REDACTED], as well as units sold and gross revenue within the year of the release date of this NAL.

### III. DISCUSSION

9. We find that Pure Enrichment apparently willfully and repeatedly marketed 14 models that are Part 15 and Part 18 devices in violation of the Commission's equipment marketing rules over a three year period.<sup>23</sup> Specifically, based on the record evidence and as shown in Appendix A, Pure Enrichment marketed five models that apparently failed to comply with the FCC's equipment authorization, user manual disclosure, and labeling requirements.<sup>24</sup> Further, Pure Enrichment marketed seven models that were properly authorized but apparently failed to comply with the Commission's user manual disclosure and labeling requirements, and two properly authorized models that apparently failed to comply with the user manual disclosure requirements.<sup>25</sup>

#### A. Pure Enrichment Apparently Violated Section 302(b) of the Act and the Commission's Equipment Marketing Rules

10. We find that radio frequency devices marketed by Pure Enrichment lacked (i) an equipment authorization, (ii) user manual disclosures, and/or (iii) FCC labeling in apparent willful and repeated violation of Section 302(b) of the Act<sup>26</sup> and Sections 2.803(b)(2), 15.101(a), 15.105(b), 15.19(a)(3), 18.203(a), 18.213, or 18.209(b) of the Commission's rules, as applicable.<sup>27</sup> Section 302(b) of the Act prohibits the marketing of radio frequency devices which do not comply with the Commission's equipment marketing rules.<sup>28</sup> Section 2.803(b)(2) of the Commission's rules provides that radio frequency devices that are subject to verification or Declaration of Conformity procedures may not be marketed unless the device complies with all applicable technical, labeling, identification, and administrative requirements.<sup>29</sup> As detailed below, the other six rules at issue set forth equipment authorization, user manuals, and labeling requirements that pertain to the specific models at issue here.<sup>30</sup>

##### 1. Part 15 and Part 18 Rules

11. The FCC is responsible for regulating electromagnetic compatibility (EMC) emissions in the United States. As applicable to the devices at issue in this investigation, the rules covering EMC emissions are set forth in Commission rules, Part 15 for radio frequency devices<sup>31</sup> and Part 18 for industrial, scientific and medical equipment (ISM).<sup>32</sup> Pure Enrichment marketed radio frequency devices that were subject to either Part 15 or Part 18 of the Commission's rules, requiring appropriate authorization, user manual disclosures, and FCC labeling.<sup>33</sup>

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<sup>23</sup> See 47 CFR pts.15, 18.

<sup>24</sup> See LOI Response at 10-11; Appendix A.

<sup>25</sup> See Appendix A.

<sup>26</sup> 47 U.S.C. § 302a(b).

<sup>27</sup> 47 CFR §§ 2.803(b)(2), 15.101(a), 15.105(b), 15.19(a), 18.203(a), 18.213, 18.209(b) (2017).

<sup>28</sup> 47 U.S.C. § 302a(b).

<sup>29</sup> 47 CFR § 2.803(b)(2).

<sup>30</sup> See 47 CFR §§ 15.101(a), 15.105(b), 15.19(a), 18.203(a), 18.213, 18.209(b) (2017).

<sup>31</sup> 47 CFR pt. 15.

<sup>32</sup> *Id.* pt. 18.

<sup>33</sup> Following receipt of the LOI, Pure Enrichment admitted that its products were radio frequency devices requiring either Part 15 or Part 18 authorization. LOI Response at 10-11. Moreover, Pure Enrichment markets ultrasonic devices such as ultrasonic humidifiers. *Id.* at 9. The equipment authorization rules specifically mention ultrasonic humidifiers as devices that require authorization. 47 CFR § 18.107(g); see also KDB Publication No. 848406, <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?id=20533&switch=P> (Mar. 26, 2007) ("Similar devices that use RF energy to generate ultrasonic waves for non-communication purposes are regulated under Part

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12. *Authorization.* Part 15 sets forth regulations for the operation of intentional, unintentional, and incidental radiators. The Part 15 radio frequency devices at issue here are unintentional radiators. An unintentional radiator is “[a] device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signals by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction.”<sup>34</sup> There are two classes of unintentional radiators: Class A (digital/commercial environmental markets) and Class B (digital/residential environments). The rules in effect at the time of the apparent violations in this case required equipment authorization for Part 15 unintentional radiators under the certification, Declaration of Conformity, or verification procedures before they could be marketed.<sup>35</sup> Pure Enrichment marketed eight models classified as Part 15 Class B digital devices that were required to be authorized under the verification procedure prior to the initiation of marketing under Section 15.101(a) of the Commission’s rules:<sup>36</sup> PEAIRPLG (PureZone 3-in-1 True HEPA Air Purifier), PEPULSEPRO/ PEPULSEDUO (electrical nerve stimulators),<sup>37</sup> PECLOUD (sound machine), PEPULSE (PurePulse TENS Electronic Stimulator), PETRYMPRO (TRYM Pro Beard and Hair Trimmer), PENAILSET (PureNails Manicure/Pedicure Set), PESADLIT (PureBliss Energy Lamp), and PESLEEP (W, K, or B) (Wave Sound Therapy Machine).<sup>38</sup>

13. For the Part 18 devices, the rules in effect at the time of the apparent violations in this case required authorization, unless otherwise specified, under either the Declaration of Conformity (DoC) or certification procedures prior to use or marketing.<sup>39</sup> Pure Enrichment marketed six products that are classified as Part 18 consumer ISM equipment under Section 18.203(a) of the Commission’s rules—PEHUMIDIF/ PEHUMSML (ultrasonic cool mist humidifiers),<sup>40</sup> PEHUMINI (travel ultrasonic water bottle humidifier), PESPAWD (B, N, W) (diffusers),<sup>41</sup> PEHUMLRG (Ultrasonic Cool Mist Humidifier XL), PEPURSPA (PureSpa Essential Oil Diffuser), and PESPALUX (PureSpa Deluxe Essential Oil Diffuser)—requiring authorization under one of these procedures before use or marketing.

14. *User Manual Disclosures and FCC Labeling.* Additionally, both Part 15 and Part 18 of the Commission’s rules required responsible parties to include consumer disclosures in the user manuals<sup>42</sup> and labels<sup>43</sup> prior to marketing to provide consumers with the information necessary to ensure the device is complaint with technical requirements and to take steps to mitigate any harmful interference caused by the device. For Part 15 devices authorized under the verification procedure, Section 15.105(b) of the Commission’s rules requires that user manuals for Class B digital devices include a warning to consumers of the device’s potential for causing interference to other radio communications and also provide a list of

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18- industrial, scientific and medical equipment. The regulations for marking, equipment authorization and importing a regulated device are contained in 47 CFR Part I, J and K respectively[.]”.

<sup>34</sup> 47 CFR § 15.3(z). All the Part 15 radio frequency devices subject to this enforcement action are unintentional radiators. LOI Response at 10-11.

<sup>35</sup> 47 CFR § 15.101 (2017).

<sup>36</sup> Previous Section 15.101(a) required the equipment to be authorized under verification, DoC, or certification procedures. 47 CFR § 15.101(a)(2017).

<sup>37</sup> The PEPULSEPRO and PEPULSEDUO are counted as one model because it is the same device with cosmetic differences.

<sup>38</sup> The PESLEEP (W, B, K) are counted as one model because it is the same device with cosmetic differences.

<sup>39</sup> *Id.* § 18.203 (2017).

<sup>40</sup> The PEHUMIDIF and PEHUMSML are counted as one model because it is the same device with cosmetic differences.

<sup>41</sup> The PESPAWD (B, N, W) are counted as one model because it is the same device with cosmetic differences.

<sup>42</sup> 47 CFR. §§ 15.105, 18.213 (2017).

<sup>43</sup> *Id.* §§ 15.19, 18.209 (2017).

steps that could possibly eliminate the interference.<sup>44</sup> Section 15.19(a)(3) of the Commission's rules require a device subject to certification or verification to bear the following statement in a conspicuous location on the device: "This device complies with part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) this device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation."<sup>45</sup>

15. For Part 18 devices, Section 18.213 of the Commission's rules requires information on the following matters be provided to the user in the instruction manual or on the device packaging if an instruction manual is not provided for any type of ISM equipment: interference potential; maintenance of the system; simple measures to correct; and an advisory statement if the device is an RF lighting device.<sup>46</sup> Section 18.209(b) of the Commission's rules required that each consumer ISM device authorized under the Declaration of Conformity procedure be labeled with a stylized FCC logo, permanently affixed to the product and readily visible to the purchaser at the time of purchase as described in Section 2.925 (i.e., visible from the outside of the equipment enclosure).<sup>47</sup>

## 2. Violations

16. Pure Enrichment admits that it marketed in the United States in the last year 14 models which were deficient under the rules in Part 15 or Part 18: (i) five models lacked proper authorization;<sup>48</sup> (ii) seven models had an authorization but lacked the required user manual disclosures and FCC labeling; and (iii) two models had an authorization but lacked user manual disclosures.<sup>49</sup>

17. In the first category, Pure Enrichment apparently marketed two models classified as Part 15 Class B digital devices that were not authorized under the verification procedure prior to the initiation of marketing in violation of Section 15.101(a) of the Commission's rules: PEPULSEPRO/PEPULSEDUO and PECLOUD.<sup>50</sup> Pure Enrichment also apparently marketed three models that lacked authorization under either the Declaration of Conformity or certification procedure prior to use or marketing in violation of Section 18.203(a) of the Commission's rules: PEHUMIDIF/PEHUMSML, PEHUMINI, and PESPAWD (B, N, W).<sup>51</sup>

18. In the second category, Pure Enrichment apparently marketed six other models that were authorized under Part 15, but lacked the user manual disclosures required by Section 15.105 of the Commission's rules, and lacked FCC labeling required by Section 15.19 of the Commission's rules: PEAIRPLG, PEPULSE, PENTRYMPRO, PENAILSET, PESADLIT, and PESLEEP (W, B, K).<sup>52</sup> Additionally, Pure Enrichment also apparently marketed one other model that was authorized under Part 18 but lacked the user manual disclosures required by Section 18.209(b) of the Commission's rules, and lacked FCC labeling required by Section 18.213 of the Commission's rules: PEHUMLRG.<sup>53</sup>

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<sup>44</sup> *Id.* § 15.105(b).

<sup>45</sup> *Id.* § 15.19(a)(3).

<sup>46</sup> *Id.* § 18.213.

<sup>47</sup> *Id.* § 18.209(b); § 2.925.

<sup>48</sup> Because five models marketed by Pure Enrichment were not authorized, the five models also lacked the proper user manual disclosures and FCC labeling. *See id.* §§ 15.19(a)(3), 15.105(b), 18.209(b), 18.213.

<sup>49</sup> *See* LOI Response at 10-15; *see also* Appendices A, B.

<sup>50</sup> LOI Response at 10-12, 16.

<sup>51</sup> LOI Response at 11-12, 14.

<sup>52</sup> LOI Response at 13, 16.

<sup>53</sup> LOI Response at 12-13.

19. Finally, in the third category, Pure Enrichment apparently marketed two models that were authorized under Part 18 but lacked the user manual disclosures required by Section 18.209(b) of the Commission's rules: PEPURSPA and PESPALUX.<sup>54</sup>

20. As noted in Appendix B, Pure Enrichment has apparently come into compliance with the Commission's rules for 13 of the 14 models at issue as of February 15, 2018,<sup>55</sup> but has continued to market one noncompliant model.<sup>56</sup> Accordingly, we find that Pure Enrichment apparently willfully and repeatedly violated Section 302(b) of the Act and Sections 2.803(b)(2), 15.101(a), 15.105(b), 15.19(a)(3), 18.203(a), 18.213, and 18.209(b) of the Commission's rules<sup>57</sup> for marketing 14 noncompliant models within the 12-month period preceding the release of this NAL.

## B. Proposed Forfeiture

21. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly<sup>58</sup> fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission."<sup>59</sup> Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Pure Enrichment of up to \$19,639 for each violation or each day of a continuing violation, up to a statutory maximum of \$147,290.<sup>60</sup> In exercising our forfeiture authority, we

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<sup>54</sup> LOI Response at 14.

<sup>55</sup> PEHUMIDIF/PEHUMSML; PESPAWD-B/S/W; PEPULSED0/PEPULSEPRO; PEAIRPLG; PEPULSE; PETRYPRO; PENAILSET; PESADLIT; PEHUMLRG; PESLEEP-W/K/B; PEPURSPA; and PESPALUX.

<sup>56</sup> PEHUMINI.

<sup>57</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b)(2), 15.101(a), 15.105(b), 15.19(a)(3), 18.203(a), 18.213, 18.209(b).

<sup>58</sup> Section 312(f)(1) and (2) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law, and defines "repeated" as "the commission or omission of such act more than once or, if continuous, for more than one day." 47 U.S.C. § 312(f)(1) and (2). The legislative history of Section 312(f)(1) and (2) clarifies that the definitions of willful and repeated applies to both Sections 312 and 503(b) of the Act. *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982). Consistent with the legislative history, the Commission has so interpreted the terms in the Section 503(b) context. *See, e.g., S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991); *recons. denied*, 7 FCC Rcd 3454 (1992). The marketing of the equipment at issue here was conscious and deliberate and occurred for more than one day and, thus, satisfies the definitions of willful and repeated.

<sup>59</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). In the April 4 Supplemental LOI Response, the Company briefly argues, albeit prematurely, that (i) an NAL with a forfeiture amount around \$350,000 would be unjust, unfair, and inconsistent with Commission precedent, and (ii) because the devices at issue are unintentional radiators, as opposed to intentional radiators, and do not require equipment certification, any proposed fine should be reduced. April 4 Supplemental LOI Response at 2. We find these arguments unpersuasive. First, as discussed below, the Commission has the discretion to issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act. In doing so, we are required to consider a number of factors in determining whether upward or downward adjustments to the proposed forfeiture are merited, as we have done here. *See* 47 CFR § 1.80(b); *infra.* paras. 22, 24-27. For instance, in *Behringer*, the Commission reviewed the specific facts of that case and concluded that a larger forfeiture was warranted as compared to other equipment marketing cases, based on the significant number of models and units involved, the duration of noncompliance, the gross revenues of the company, and the company's failure to resolve the noncompliance as quickly as it claimed it would. *Behringer USA, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 1820, 1828, para. 23 (2006) (*Behringer*). Second, the models at issue in this NAL required equipment authorizations—either Declaration of Conformity or verification (depending on the particular model). Moreover, we do not distinguish between the type of equipment authorization in determining the appropriate forfeiture in our enforcement actions.

<sup>60</sup> *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (b)(9). This proposed forfeiture amount reflects inflation adjustments effective as of the date of this Notice of Apparent Liability to the amounts specified in Section 503(b)(2)(D) of \$10,000 for each violation or each day of a continuing violation and \$75,000 for any single act or failure to act. *See* 47 CFR § 1.80(b)(9); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 33 FCC Rcd 46 (EB 2018); *see also Adjustment of Civil*

(continued...)

must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>61</sup> In addition, the Commission has established forfeiture guidelines, which provide base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>62</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>63</sup>

22. Under the *Forfeiture Policy Statement*<sup>64</sup> and Section 1.80 of the Commission’s rules, the base forfeiture amount for the marketing of unauthorized equipment is \$7,000 per model.<sup>65</sup> The record establishes that Pure Enrichment marketed (i) five models that lacked proper authorization, (ii) seven models that had proper authorization but lacked the required user manual disclosures and FCC labeling, and (iii) two models that had proper authorization but lacked the required user manual disclosures.<sup>66</sup> It is well-established that the base forfeiture is \$7,000 for marketing a device without first obtaining proper authorization for that device.<sup>67</sup> Section 2.803(b)(2) specifically prohibits the marketing of a radio frequency device unless “the device complies with *all* applicable technical, labeling, identification and administrative requirements.”<sup>68</sup> Accordingly, we propose to apply the \$7,000 base forfeiture to each of the 14 models that failed to comply with the Commission’s equipment marketing requirements within the last twelve months, resulting in an aggregate base forfeiture of \$98,000.

23. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that upward adjustments of the proposed forfeiture amount are warranted for the

(Continued from previous page...)

*Monetary Penalties to Reflect Inflation*, 83 Fed. Reg. 4600 (Feb. 1, 2018).

<sup>61</sup> 47 U.S.C. § 503(b)(2)(E). See 47 CFR § 1.80(b)(8); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100–01, para. 27 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>62</sup> 47 CFR § 1.80(b)(8); *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

<sup>63</sup> 47 CFR § 1.80(b), Note to paragraph (b)(8). See *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

<sup>64</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17113.

<sup>65</sup> 47 CFR § 1.80(b). See e.g., *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820 (2006), *forfeiture ordered*, 22 FCC Rcd 10451(2007) (forfeiture paid) (*Behringer*).

<sup>66</sup> The violations at issue in this NAL occurred within the year preceding release of the NAL. The violations, however, span from July 28, 2014, when Pure Enrichment imported the first unauthorized model to February 15, 2018, when Pure Enrichment corrected packaging for 13 models, and continuing for the last model which Pure Enrichment markets did not correct the labeling and user manual disclosure to comply with the Commission’s rules. Pure Enrichment provided the dates between May 2017 and August 2017 that it either obtained an equipment authorization or requested the contract manufacturers to correct the labeling and user manual disclosures for 13 of the 14 models. See September 11 Supplemental LOI Response at Attachment; see also Appendix B. Because Pure Enrichment had no visibility into the sales of its [REDACTED] and therefore could not accurately report when it came into compliance with the Commission’s rules for the 13 models, we have used those dates in determining the approximate length of time each of the 13 models was noncompliant. See Appendix B. Pure Enrichment also indicates that the labeling and user manual disclosures have not been corrected for one model, PPESADLIT, but sales and revenue data for the model provided by Pure Enrichment indicate that it marketed the model during this period. See September 11 Supplemental LOI Response at [REDACTED]; see also Appendix B.

<sup>67</sup> See, e.g., *Behringer*, 21 FCC Rcd at 1827, para. 21 (assessing a \$7,000 base forfeiture for each model the target marketed without an authorization).

<sup>68</sup> 47 CFR § 2.803(b)(2) (emphasis added).

intentional nature of the violations and resulting economic gain as well as the duration and scope of the violations.

24. First, we find that an upward adjustment is merited for Pure Enrichment's intentional conduct, which resulted in substantial economic gain. The Company continued to market its noncompliant devices even after becoming aware of the investigation into its apparent violations of the Act and the Commission's equipment marketing rules and acknowledging in its responses that the models needed authorization, labels, and user manual disclosures.<sup>69</sup> Following receipt of the May 26, 2017 LOI, Pure Enrichment continued to market at least [REDACTED] units of noncompliant models resulting in substantial economic gain of gross revenues of at least [REDACTED].<sup>70</sup> These units were marketed from a period spanning from June 2017 until August 2017,<sup>71</sup> when Pure Enrichment contacted contract manufacturers to correct the user manual disclosures and labeling violations in open or subsequent orders.<sup>72</sup> Although the Company corrected 13 of the 14 models as of February 15, 2018—about nine months after becoming aware of its apparent violations—Pure Enrichment continues to market one noncompliant model.

25. Second, we find that an upward adjustment is warranted based on the duration and scope of Pure Enrichment's violations.<sup>73</sup> Pure Enrichment marketed more than half (i.e., nine models) of the 14 noncompliant models subject to this investigation for more than a year, including some for up to three years.<sup>74</sup> Further, the scope of the violations was pervasive. More than half of the models apparently

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<sup>69</sup> See *Behringer*, 21 FCC Rcd at 1827-28, para. 22 & n.47 (concluding that a substantial upward adjustment was warranted for, among other things, Behringer's continued marketing of unauthorized devices despite knowing that it was in violation). We observe that, even after acknowledging that several models lacked labels and manuals, Pure Enrichment continued to market inventory that failed to comply with the user manual and label obligations. See, e.g., March 27 Supplemental LOI Response.

<sup>70</sup> See Appendix A.

<sup>71</sup> See *Purple Communications, Inc.*, Notice of Apparent Liability, 29 FCC Rcd. 5491, 5506, para.34 (2014), forfeiture ordered, 30 FCC Rcd 14892 (2015); *Behringer*, 21 FCC Rcd 1820, 1827, para. 22 (2006); *ASC Telcom, Inc., d/b/a Alternatel*, Notice of Apparent Liability and Forfeiture, 17 FCC Rcd 18654, 18656, para.9 (2002), Order and Consent Decree, 19 FCC Rcd 5160 (2004).

<sup>72</sup> See Appendix A. See also September 11 Supplemental LOI Response. We believe that this is the minimum number of noncompliant units sold within the year preceding issuance of the NAL based on several factors. First, none of Pure Enrichment's models at issue in this case were fully compliant with Section 2.803 requirements when Pure Enrichment began importing the models in 2014. Additionally, although the September 11 Supplemental LOI response provides dates from June through August 2017, when Pure Enrichment made requests to the contract manufacturers to correct the labeling and user manuals, the requested date does not necessarily denote the date the changes were made. Pure Enrichment, moreover, continued to sell inventory procured prior to the requested date and admits that it has no visibility into sales, compliant or otherwise, into sales of its [REDACTED]. *Id.* Because corrections were requested only for open or future orders, it is also unknown how many noncompliant units were sold. Pure Enrichment did not reorder the PEHUMINI, yet Pure Enrichment continued to market the noncompliant PEHUMINI until Pure Enrichment corrected the violations in February 2018. See March 27 Supplemental LOI Response. Regarding the discontinued the PESADLIT however, Pure Enrichment apparently continues to market the noncompliant PESADLIT on its website. See *supra* note 21.

<sup>73</sup> See *Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture 27 FCC Rcd 13806, 13810-11, paras. 10-11 (2012) (forfeiture paid) (upward adjustment of over three times the base forfeiture warranted because of extended duration of the violation); *Midessa Television Ltd. P'ship*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250-51, para. 11 (2014) (forfeiture paid) (upward adjustment for the base forfeiture because of extended duration of the violation). Although several violations are not actionable due to the expiration of the statute of limitations period, the Commission may consider facts arising before the expiration date in determining an appropriate forfeiture amount for acts that occurred inside of the statute of limitations period. See *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000).

<sup>74</sup> The nine models are: PEHUMIDIF/PEHUMSML, PEHUMINI, PESPAWD-B/N/W,

violated more than one aspect of the equipment marketing rules, with seven models apparently having both user manual and labelling violations, and four models first apparently failing to obtain an equipment authorization and, once obtained, then apparently failing to satisfy the user manual and labelling requirements.

26. We therefore apply an upward adjustment of the base forfeiture amount for these factors. Taken together, we propose a total upward adjustment of \$492,380, which will protect the interests of consumers and serve as a deterrent against future violations of the Commission's rules.

27. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. For example, Pure Enrichment has not argued an inability to pay, and such an argument would likely be unavailing given the company's approximately \$34 million gross revenues in 2016.<sup>75</sup>

28. Pure Enrichment's decision to continue to market noncompliant models after becoming aware of the need to bring the models into compliance highlights the importance of establishing a proposed forfeiture that serves as a sufficient incentive to comply with the rules.<sup>76</sup> Pure Enrichment's claim of initial misunderstanding and confusion whether all of the models required authorizations, moreover, does not mitigate the violations.<sup>77</sup> Thus, we find no basis to make any downward adjustment of the proposed forfeiture. As stated above, our rules require that equipment must meet all applicable technical, labeling, identification and administrative requirements—not just technical requirements—prior to marketing.<sup>78</sup> Finally, given the apparent continuing nature of Pure Enrichment's violations, and

(Continued from previous page...) —————  
PEPULSEDUO/PEPULSEPRO, PEPULSE, PENAILSET, PESADLIT, PEPURSPA; and PESPALUX. See Appendix B.

<sup>75</sup> See *supra* note 7.

<sup>76</sup> Other cases have declined to apply downward adjustments established by precedent, citing, as reasons for such action, the duration of the violation, and the lack of incentive for parties to comply with the Commission's rules, among other rationales. See *Behringer*, 21 FCC Rcd 1820, para. 22-23 (2006) (upwardly adjusted for duration, egregiousness, economic gain and ability to pay and found no downward adjustments warranted); see also *South Bay Aviation, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 972, 974, para. 7 (EB 2011) (declining to follow precedent to lower the forfeiture amount, and instead applying an upward adjustment, noting that the unlicensed operation violation had been ongoing for approximately three years and that the reduced forfeiture amounts applied in past cases did not appear to create sufficient incentives for licensees to comply with the Commission's rules), *forfeiture ordered*, 27 FCC Rcd 3013 (EB 2012) (forfeiture paid); *DTG Operations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17144, 17146, para. 8 (EB 2010) (declining to lower forfeiture amount, and instead applying an upward adjustment, because the unlicensed operation was ongoing for 11 years and that such action posed significant public safety risk), *forfeiture ordered*, 27 FCC Rcd 3252 (EB 2012) (forfeiture paid).

<sup>77</sup> See *Unipoint Technologies, Inc. d/b/a Comfi.com d/b/a Masterbell.com d/b/a Pushline.com a/k/a Communications Fidelity*, Forfeiture Order, 29 FCC Rcd 1633, 1640, para. 21 (2014) ("It is immaterial whether [the licensee's] violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight. Such excuses do not warrant a downward adjustment of the forfeiture."), default judgment entered, *United States v. Unipoint Technologies, Inc.*, No. 14-12020-LTS, 2016 WL 8902575, at \*1-2 (D. Mass. Apr. 27, 2016); *Texas Soaring Association, Inc. Midlothian, Texas*, Forfeiture Order, 28 FCC Rcd 10740, 10743-44, para. 7 (EB 2013) (forfeiture paid) ("Even if administrative oversight, inadvertence, or a lack of familiarity with the Rules may have contributed to the violation, they do not . . . mitigate liability arising therefrom") (footnotes omitted); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (EB 2013) (forfeiture paid) (rejecting argument that the unintentional nature of the violation justifies mitigation of the forfeiture amount), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015); *Am. Móvil*, 26 FCC Rcd at 8676, para. 11 ("While América Móvil claimed that the violation was a result of an inadvertent oversight, it is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.") (footnote omitted).

<sup>78</sup> 47 CFR § 2.803.

pursuant to Section 403 of the Act,<sup>79</sup> we require Pure Enrichment to submit an affidavit, signed by an officer or director of the company, to the Enforcement Bureau within 30 days of the release of this NAL, stating whether it has complied with Sections 302(b) of the Act and Section 2.803(a) of the Commission's rules with respect to this model, and if not, providing its plans for full compliance.<sup>80</sup> Pure Enrichment's failure to submit the affidavit, or failure to comply with the applicable equipment requirements, may subject the company to further enforcement action, including potentially, an Order to Show Cause.

29. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission's rules, and the upward adjustments discussed above, we propose a total forfeiture of \$590,380, which is the aggregate of the \$98,000 base forfeiture and the \$492,380 upward adjustment, for which Pure Enrichment is apparently liable.<sup>81</sup>

#### IV. ORDERING CLAUSES

30. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>82</sup> and Section 1.80 of the Commission's rules,<sup>83</sup> Bear Down Brands, LLC doing business as Pure Enrichment is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five hundred ninety thousand three hundred eighty dollars (\$590,380) for willful and repeated violations of Section 302(b) of the Act<sup>84</sup> and Sections 2.803(b)(2), 15.101(a), 15.105(b), Section 15.19(a)(3), Section 18.203(a), Section 18.213, and Section 18.209(b) of the Commission's rules.<sup>85</sup>

31. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,<sup>86</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Bear Down Brands, LLC doing business as Pure Enrichment **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph **35** below.

32. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Bear Down Brands, LLC doing business as Pure Enrichment shall send electronic notification of payment to EB-SED-Response@fcc.gov and Pamera Hairston at Pamera.Hairston@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>87</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

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<sup>79</sup> 47 U.S.C. § 403.

<sup>80</sup> See 47 U.S.C. § 302a(b); 47 CFR § 2.803(a).

<sup>81</sup> We note that the proposed forfeiture of \$590,380 is considerably less than a potential forfeiture of \$2,062,060 which is the statutory maximum allowed under Section 503(b)(2)(D) for 14 separate continuing violations.

<sup>82</sup> 47 U.S.C. § 503(b).

<sup>83</sup> 47 CFR § 1.80.

<sup>84</sup> 47 U.S.C. § 302a(b).

<sup>85</sup> 47 CFR §§ 2.803(b)(2), 15.101(a), 15.105(b), 15.19(a)(3), 18.203(a), 18.213, and 18.209(b) (2017).

<sup>86</sup> *Id.* § 1.80.

<sup>87</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

33. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.<sup>88</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

34. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Commission's rules.<sup>89</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to EB-SED-Response@fcc.gov and Pamera.Hairston@fcc.gov.

35. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

36. **IT IS FURTHER ORDERED** that, pursuant to Section 403 of the Act,<sup>90</sup> Bear Down Brands, LLC dba Pure Enrichment must submit the affidavit described in paragraph 28 above, within 30 days from the release of this NAL, to: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Pamera D. Hairston, Enforcement Bureau, Spectrum Enforcement Division.

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<sup>88</sup> See 47 CFR § 1.1914.

<sup>89</sup> 47 CFR §§ 1.16, 1.80(f)(3).

<sup>90</sup> 47 U.S.C. § 403.

37. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Josh Goldberg, President, Bear Down Brands, LLC dba Pure Enrichment, 1100 S Linwood Ave, #B Santa Ana, CA 92705, and to David H. Solomon, Esq. and Timothy J. Cooney, Esq., Wilkinson Barker Knauer LLP, 1800 M Street NW, Suite 800N, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

APPENDIX A

Device	Description	Device Type	Units Sold and Gross Revenues for January 2016 – August 2017		Units Sold and Gross Revenues for June – August 2017 <sup>91</sup>	
			Units	Gross Revenue	Units	Gross Revenue
<b>Unauthorized Models</b>						
PEHUMIDIF	Ultrasonic Cool Mist Humidifier	Part 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PEHUMSML <sup>92</sup>	Ultrasonic Cool Mist Humidifier for Small Rooms		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PEHUMINI	Travel Ultrasonic Water Bottle Humidifier	Part 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PESPAWD - B PESPAWD - N PESPAWD - W <sup>93</sup>	PureSpa Natural Aroma Diffuser	Part 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PEPULSEPRO	PurePulse Pro TENS Electronic Stimulator	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PEPULSEDUO <sup>94</sup>	PurePulse Duo TENS Massager/EMS Electronic Stimulator		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PECLOUD	Baby Cloud Portable Sound Machine	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Authorized Models but User Manual Disclosure and Labeling Violations</b>						
PEAIRPLG	PureZone 3-in-1 True HEPA Air Purifier	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PEPULSE	PurePulse TENS Electronic Stimulator	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PETRYMPRO	TRYM Pro Beard and Hair Trimmer	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PENAILSET	PureNails Manicure/Pedicure Set	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PESADLIT	PureBliss Energy Lamp	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PEHUMLRG	Ultrasonic Cool Mist Humidifier XL	Part 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PESLEEP-W PESLEEP-B PESLEEP-K <sup>95</sup>	Wave Sound Therapy Machine	Part 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Authorized Models but User Manual Disclosure Violations</b>						
PEPURSPA	PureSpa Essential Oil Diffuser	Part 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PESPALUX	PureSpa Deluxe Essential Oil Diffuser	Part 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total</b>			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

APPENDIX B

<sup>91</sup> Based on information supplied by the Company that falls within the 12-month period preceding the release of this Notice of Apparent Liability.

<sup>92</sup> The PEHUMIDIF and PEHUMSML are counted as one model because it is the same device with cosmetic differences.

<sup>93</sup> The PESPAWD (B, N, W) are counted as one model because it is the same device with cosmetic differences.

<sup>94</sup> The PEPULSEPRO and PEPULSEDUO are counted as one model because it is the same device with cosmetic differences.

<sup>95</sup> The PESLEEP (W, B, K) are counted as one model because it is the same device with cosmetic differences.

	Date Imported into US	Date first Marketed in US	Received Authorization [Date]	User Manual Disclosure requested	Labels update requested	Length of Time Model was Non-Compliant
<b>Unauthorized Models</b>						
PEHUMIDIF <sup>96</sup>	7/27/2015	8/10/2015	5/31/2017	6/20/2017	6/24/2017	~ 23 months
PEHUMSML	11/15/2016	11/29/2016	5/31/2017	8/3/2017	6/24/2017	~ 7 months
PEHUMINI	2/24/2016	3/2/2016	6/27/2017	2/15/2018 <sup>97</sup>	2/15/2018	~ 24 months
PESPAWD-B <sup>98</sup>	2/25/2016	3/2/2016	6/14/2017	8/3/2017	8/3/2017	~ 17 months
PESPAWD-N						
PESPAWD-W						
PEPULSEDUO <sup>99</sup>	6/22/2015	7/3/2015	6/30/2017	8/16/2017	8/16/2017	~ 26 months
PEPULSEPRO	9/27/2014	10/2/2014	6/30/2017	8/16/2017	8/16/2017	~ 35 months
PECLOUD	1/10/2017	1/23/2017	6/20/2017	6/22/2017	6/22/2017	~ 5 months
<b>Authorized Models but User Manual Disclosure and Labeling Violations</b>						
PEAIRPLG	7/26/2016	8/2/2016	11/18/2016	7/7/2017	7/7/2017	~ 12 months
PEPULSE	7/28/2014	8/6/2014	7/10/2015	8/12/2017	8/12/2017	~ 37 months
PETRYMPRO	10/31/2016	10/31/2016	9/26/2016	8/8/2017	8/8/2017	~ 10 months
PENAILSET	9/15/2015	12/12/2015	8/6/2015	8/23/2017	8/23/2017	~ 23 months
PESADLIT <sup>100</sup>	11/5/2016	11/14/2016	9/5/2016	N/A	N/A	continuing
PEHUMLRG	9/10/2016	9/22/2016	8/1/2016	8/3/2017	6/24/2017	~ 9 months
PESLEEP-W <sup>101</sup>	3/28/2017	4/7/2017	8/4/2016	6/2/2017	6/2/2017	~ 3 months
PESLEEP-K	4/24/2017	5/8/2017	8/4/2016	6/2/2017	6/2/2017	~ 2 months
PESLEEP-B	9/20/2016	10/5/2016	8/4/2016	6/2/2017	6/2/2017	~ 11 months
<b>Authorized but User Manual Disclosure Violations</b>						
PEPURSPA	4/25/2015	5/5/2015	7/15/2014	8/3/2017	8/3/2017	~ 28 months
PESPALUX	4/25/2015	5/5/2015	4/27/2015	8/3/2017	8/3/2017	~ 28 months

<sup>96</sup> The PEHUMIDIF and PEHUMSML are counted as one model because it is the same device with cosmetic differences.

<sup>97</sup> The date reflects when Pure Enrichment brought the manuals and labels into compliance.

<sup>98</sup> The PESPAWD (B, N, W) are counted as one model because it is the same device with cosmetic differences.

<sup>99</sup> The PEPULSEPRO and PEPULSEDUO are counted as one model because it is the same device with cosmetic differences.

<sup>100</sup> Pure Enrichment explained that this model was discontinued. The model, however, still appears on Pure Enrichment's website.

<sup>101</sup> The PESLEEP (W, B, K) are counted as one model because it is the same device with cosmetic differences.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *In the Matter of Bear Down Brands, LLC dba Pure Enrichment*, File No. EB-SED-17-00024115

Given that a primary function of the Commission is to protect the integrity of the nation's airwaves, we must vigorously enforce our radio frequency (RF) rules. Generally, I believe enforcement serves three main functions: generates corrective behavior for those individuals out of compliance with our rules; appropriately deters other entities from cutting corners or worse, such as ignoring our requirements altogether and placing communications services at risk; and compensates the American public for the potential harm caused. Unfortunately, however, the enforcement of our equipment marketing rules, which is the principal way of ensuring that RF devices operate effectively without causing harmful interference, falls far short. The base forfeiture is \$7,000 for any model that does not comply with these requirements. And, that is \$7,000 regardless of whether one device of a certain model was sold or a million; whether it resulted in net profits of \$1 or \$1 billion; or if these devices were out of compliance for one day or one year. This is by no means the fault of the Chairman, but a larger issue far preceding his tenure.

In the specific case before us, some of the models by Pure Enrichment failed to comply with multiple requirements, including having the requisite equipment authorization, the proper manual disclosures, and/or FCC labels. To make matters worse, even after the company was informed of the apparent rule violations, it continued to market 14 noncompliant devices for some time and, in fact, one of these noncompliant models is allegedly still being marketed today. While forfeitures can be upwardly adjusted to account for the severity of the violation, as is done here, it still does not excuse the totally inadequate base forfeiture of \$98,000 for the serious violations revealed in this item. Compare this proposed forfeiture to robocall violations where the Commission assesses penalties per phone call, resulting in multi-million-dollar fines.

I thank the Chairman for agreeing to increase the proposed fine, so that the punishment better fits the violation, and committing to review the Commission's forfeiture policies in the future. I do not believe that it is ideal to formulate upward adjustments, in large part, on a percentage of gross revenues earned from selling noncompliant devices; but, in this instance, it appears to be the best metric that we have to derive an appropriate penalty and is consistent with our mission. Hopefully, we will be able to update the Commission's forfeiture policy soon so that the baseline penalties are more reflective of the severity of these violations. Not only would this diminish our reliance on upward adjustments, but it would also improve the transparency, consistency, and credibility of our enforcement process. I look forward to working with the Chairman to improve our enforcement policies at the appropriate time and ensure that they meet the needs of the public and the communications marketplace.