

1 Enforcement Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as
2 “Proposition 65,” businesses with ten or more employees must provide a “clear and reasonable
3 warning” prior to exposing people to this chemical.

4 **II**

5 **PARTIES**

6 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes,
7 helping safeguard the public from health hazards by reducing the use and misuse of hazardous and
8 toxic chemicals, facilitating a safe environment for consumers and employees and encouraging
9 corporate responsibility.

10 3. Defendant Gary Null is a business that develops, manufactures, distributes and/or sells
11 nutritional health products that have exposed users to lead in the State of California within the
12 relevant statute of limitations period.¹ These “Covered Products” are “Gary Null & Associates Inc.
13 Gary Null’s Muscle with Rice Protein,” “Gary Null & Associates, Inc. Gary Null’s Cruciferous
14 Stuff Rich Chocolate Flavor,” “Gary Null & Associates, Inc. Gary Null’s Coco-Magic Bar
15 Coconut-Chocolate,” “Gary Null & Associates, Inc. Gary Null’s Detox,” “Gary Null and
16 Associates, Inc. Gary Null’s Greens & Grains,” “Gary Null & Associates, Inc. Gary Null’s Muscle
17 Natural French Vanilla Flavor,” and “Gary Null and Associates Inc. Gary Null’s Friendly Fiber
18 Formula”. Gary Null is a company subject to Proposition 65 as it employs ten or more persons, and
19 has employed ten or more persons at all times relevant to this action.

20 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and
21 capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each of
22 said Does is responsible, in some actionable manner, for the events and happenings hereinafter
23 referred to, either through said Defendant’s conduct, or through the conduct of its agents, servants or
24 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
25 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint
26 to set forth the same.

27 _____
28 ¹ The statute of limitations period in this case has been tolled by agreement of the parties.

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III

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10 because this case is a cause not given by statute to other trial courts.

6. The Complaint is based on allegations contained in a Notice of Violation dated November 30, 2012, served on the California Attorney General, other public enforcers and Gary Null. The Notice of Violation constitutes adequate notice to Gary Null because it provided adequate information from which to allow Gary Null to assess the nature of the alleged violation, consistent with Proposition 65 and its implementing regulations. Each copy of the Notice of Violation was accompanied by a certificate of merit and a certificate of service, both of which comply with Proposition 65 and its implementing regulations. The Notice of Violation served on Gary Null also included a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”. Service of the Notice of Violation and accompanying documents complied with Proposition 65 and its implementing regulations. A true and correct copy of this Notice of Violation and associated documents is attached hereto as Exhibit A. More than 60 days have passed since the Notice of Violation was mailed and no public enforcement entity has filed a complaint in this case.

7. This Court is the proper venue for the action because the causes of action have arisen in the County of Alameda where some of the violations of law have occurred. Furthermore, this Court is the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

IV

STATUTORY BACKGROUND

8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as “Proposition 65” by an overwhelming majority vote of the people in November of 1986.

9. The warning requirement of Proposition 65 is contained in Health & Safety Code section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive

1 toxicity without first giving clear and reasonable warning to such individual, except
2 as provided in Section 25249.10.

3 10. Implementing regulations for Proposition 65 define expose as “to cause to ingest,
4 inhale, contact via body surfaces or otherwise come into contact with a listed chemical.” An
5 individual may come into contact with a listed chemical through water, air, food, consumer products
6 and any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27,
7 § 25102, subd. (i).)

8 11. In this case, the exposures at issue are caused by consumer products. Implementing
9 regulations for Proposition 65 define a consumer product exposure as “ an exposure which results
10 from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of
11 a consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
12 Regs., tit. 27, § 25602, subd. (b).)

13 12. Whenever a clear and reasonable warning is required under Health & Safety Code
14 section 25249.6, the “method employed to transmit the warning must be reasonably calculated
15 considering the alternative methods available under the circumstances, to make the warning
16 message available prior to exposure.” (Cal. Code Regs., tit. 27, § 25601.) The warning requirement
17 may be satisfied by a warning that appears on a product’s label or other labeling, shelf labeling,
18 signs, a system of signs, public advertising identifying the system and toll-free information services,
19 or any other system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §
20 25603.1, subd. (a)-(d).)

21 13. Proposition 65 establishes a procedure by which the State is to develop a list of
22 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
23 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
24 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead
25 was listed as a chemical known to the State of California to cause developmental toxicity in the
26 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a
27 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.
28 27, § 27001.)

1 14. The Maximum Allowable Dose Level for lead as a chemical known to cause
2 reproductive toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No
3 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.
4 27, § 25705.)

5 15. Proposition 65 may be enforced by any person in the public interest who provides
6 notice sixty days before filing suit to both the violator and designated law enforcement officials.
7 The failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
8 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

9 16. Proposition 65 provides that any person “violating or threatening to violate” Proposition
10 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,
11 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
12 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
13 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
14 (Health & Safety Code, § 25249.7, subd. (b)(1).)

15 V

16 **STATEMENT OF FACTS**

17 17. Gary Null has developed, manufactured, distributed and/or sold the Covered
18 Products containing lead into the State of California. Consumers have been ingesting these
19 products for many years, without any knowledge of their exposure to lead, a very dangerous
20 chemical.

21 18. For many years, Gary Null has knowingly and intentionally exposed numerous persons
22 to lead, without providing a Proposition 65 warning. Prior to ERC’s Notice of Violation, Gary Null
23 failed to provide a warning on the label of the Covered Products. Gary Null has at all times relevant
24 hereto been aware that the Covered Products contained lead and that persons using these products
25 have been exposed to the chemical.

26 Gary Null’s website has made various representations regarding the quality, purity, and
27 beneficial nature of the company’s products, as well as the steps purportedly taken to ensure these
28 qualities:

1 • “Gary Null and Associates is your source for premium natural health products developed by
2 America’s leading authority on healthy living, Gary Null, Ph.D. Our product line features only the
3 highest quality vitamin and mineral supplements and nutraceutical powders made from nature’s
4 most beneficial superfoods.”

5 • “At Gary Null & Associates, we believe that the time to rethink our approach to health has
6 arrived. We are dedicated to providing you with a line of revolutionary nutritional and personal care
7 formulas designed to invigorate the body, enliven the mind, and renew the spirit. When creating our
8 products, we don't compromise on quality so you don't have to compromise on health.”

9 • “An internationally renowned expert in the field of health and nutrition, Gary Null, Ph.D is
10 the author of over 70 best-selling books on healthy living and the director of over 100 critically
11 acclaimed full-feature documentary films on natural health, self-empowerment and the
12 environment. He is the host of “The Gary Null Show”, the country’s longest running nationally
13 syndicated health radio talk show which can be heard daily on ProgressiveRadioNetwork.com.”

14 • “Gary Null has channeled his passion for natural health and extensive knowledge of
15 nutrition to create a truly exceptional line of health products that have helped thousands of people
16 experience optimum health naturally.”

17 • “The Slogan I've used to describe the product line for many years now is "Quality From
18 Nature." What this means is that when deciding to create a product, the first consideration is the
19 source. How close to nature are the raw ingredients? How pure are those ingredients? I cannot
20 proceed without this very basic first step. So when I say that I have the purest line of natural
21 products, I firmly stand behind that statement with pride.” – Gary Null

22 Given the company’s focus on product formulation, the company’s attention to the sources
23 and composition of its ingredients, and the extensive experience and expertise of the company’s
24 founder in nutrition and nutritional products, Gary Null has undoubtedly been aware of the presence
25 of lead in the Covered Products. Nevertheless, the company’s website touts Gary Null’s
26 commitment to consumers, and represents to the public that’s its products are of the highest quality
27 and completely pure. Gary Null has been aware of the lead in the Covered Products and has failed
28 to disclose the presence of this chemical to the public, who undoubtedly believe they have been

1 ingesting totally healthy and pure products pursuant to the company's statements.

2 19. Both prior and subsequent to ERC's Notice of Violation, Gary Null failed to provide
3 consumers of the Covered Products with a clear and reasonable warning that they have been
4 exposed to a chemical known to the State of California to cause cancer, birth defects and other
5 reproductive harm.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear**
8 **and Reasonable Warning under Proposition 65)**

9 20. ERC refers to paragraphs 1-19, inclusive, and incorporates them herein by this
10 reference.

11 21. By committing the acts alleged above, Gary Null has, in the course of doing business,
12 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to
13 the State of California to cause cancer, birth defects and other reproductive harm without first giving
14 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code
15 section 25249.6.

16 22. Said violations render Gary Null liable for civil penalties up to \$2,500 per day, for
17 each violation.

18 **SECOND CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 23. ERC refers to paragraphs 1-22, inclusive, and incorporates them herein by this
21 reference.

22 24. There exists an actual controversy relating to the legal rights and duties of the parties,
23 within the meaning of Code of Civil Procedure section 1060, between ERC and Gary Null
24 concerning whether Gary Null has exposed individuals to a chemical known to the State of
25 California to cause cancer, birth defects and other reproductive harm without providing clear and
26 reasonable warning.

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VI

PRAYER

WHEREFORE ERC prays for relief as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to proof;
2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7, subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders as are necessary to prohibit Gary Null from exposing persons to lead without providing clear and reasonable warning;
3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring that Gary Null has exposed individuals to a chemical known to the State of California to cause birth defects and other reproductive harm without providing clear and reasonable warning; and
4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the substantial benefit theory;
5. For costs of suit herein; and
6. For such other relief as the Court may deem just and proper.

Dated: July 15, 2014

By



Michael Freund
Ryan Hoffman
Attorneys for Environmental Research Center

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November 30, 2012

**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 represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. 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 an attachment 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:

Gary Null & Associates, Inc.

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

Gary Null & Associates Inc. Gary Null’s Muscle with Rice Protein - Lead

Gary Null & Associates, Inc. Gary Null’s Cruciferous Stuff Rich Chocolate Flavor - Lead

Gary Null & Associates, Inc. Gary Null’s Coco-Magic Bar Coconut-Chocolate - Lead

Gary Null & Associates, Inc. Gary Null’s Detox - Lead

Gary Null and Associates, Inc. Gary Null’s Greens & Grains - Lead

Gary Null & Associates, Inc. Gary Null’s Muscle Natural French Vanilla Flavor - Lead

Exhibit A

Gary Null and Associates Inc. Gary Null's Friendly Fiber Formula - 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 purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 30, 2009, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Gary Null & Associates, Inc.)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Gary Null & Associates, Inc.

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: November 30, 2012



Michael Freund

CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within entitled action. 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 November 30, 2012, 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 the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Gary Null & Associates, Inc.
P.O. Box 918
Planetarium Station
New York, NY 10024

Current President or CEO
Gary Null & Associates, Inc.
2307 Broadway
New York, NY 10024

On November 30, 2012, I served the following documents: **NOTICE OF VIOLATION, 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)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

On November 30, 2012, I served the following documents: **NOTICE OF VIOLATION, 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 November 30, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

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

November 30, 2012

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

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

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.
- 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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into 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 enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.