

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

14 MAY 15 AM 1:11

ELIAS BUTT

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8 Attorneys for Plaintiff Environmental Research Center

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 **ENVIRONMENTAL RESEARCH CENTER,**
12 **a California non-profit corporation**

13 **Plaintiff,**

14 **vs.**

15 **TO GO BRANDS, INC.; TAXUS CARDIUM**
16 **PHARMACEUTICALS GROUP, INC. dba**
17 **MEDPODIUM; CELL-NIQUE**
18 **CORPORATION dba HEALTHY BRANDS**
19 **COLLECTIVE and DOES 1-100**

20 **Defendants.**

21 **CASE NO. GC - 14 - 539326**

22 **COMPLAINT FOR INJUNCTIVE**
23 **AND DECLARATORY RELIEF AND**
24 **CIVIL PENALTIES**

25 [Miscellaneous Civil Complaint (42)]
26 Proposition 65, Health & Safety Code
27 Section 25249.5 et seq.]

28 Plaintiff Environmental Research Center hereby alleges:

I

INTRODUCTION

1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this action as a private attorney general enforcer and in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory relief and civil penalties to remedy Defendants To Go Brands, Inc., Taxus Cardium Pharmaceuticals Group,

1 Inc. dba Medpodium¹, Cell-nique Corporation dba Healthy Brands Collective, and Does 1-100
2 (hereinafter the “To Go Brands companies”)' failure to warn consumers that they have been exposed
3 to lead from several of the To Go Brands companies' nutritional health products. Lead is a
4 chemical known to the State of California to cause cancer, birth defects and other reproductive
5 harm. Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety
6 Code section 25249.5 *et seq.*) also known as “Proposition 65,” businesses with ten or more
7 employees must provide a “clear and reasonable warning” prior to exposing persons to these
8 chemicals.

9
10 **II**
PARTIES

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

15 3. Defendants the To Go Brands companies are businesses that have developed,
16 manufactured, distributed and/or sold nutritional health products that have exposed users to lead in
17 the State of California within the relevant statute of limitations period. To Go Brands, Inc.'s and
18 Cell-nique Corporation dba Healthy Brands Collective's nutritional health products continue to
19 cause these exposures. These “Covered Products” are “To Go Brands Inc. Greens To Go Delicious
20 Apple Melon Flavor” and “To Go Brands Inc. Smoothie Complete Vanilla Berry”. The To Go
21 Brands companies are subject to Proposition 65 as they employ ten or more persons.

22 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and
23 capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each of
24 said Does is responsible, in some actionable manner, for the events and happenings hereinafter
25 referred to, either through said Defendant's conduct, or through the conduct of its agents, servants or

26 _____
27 ¹ Since the issuance of ERC's Notice of Violation in this matter, Cardium Therapeutics, Inc. (one
28 of the companies named in the Notice) changed its name to Taxus Cardium Pharmaceuticals
Group, Inc.

1 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
2 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint
3 to set forth the same.

4 III

5 JURISDICTION AND VENUE

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

8 6. The Complaint is based on allegations contained in a Notice of Violation dated May
9 17, 2013, served on the California Attorney General, other public enforcers and the To Go
10 Brands companies. A true and correct copy of this Notice of Violation is attached hereto as
11 Exhibit A. More than 60 days have passed since the Notice of Violation was mailed and no
12 public enforcement entity has filed a complaint in this case.

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

17 IV

18 STATUTORY BACKGROUND

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

21 9. The warning requirement of Proposition 65 is contained in Health & Safety Code section
22 25249.6, which provides:

23 No person in the course of doing business shall knowingly and intentionally expose
24 any individual to a chemical known to the state to cause cancer or reproductive
25 toxicity without first giving clear and reasonable warning to such individual, except
as provided in Section 25249.10.

26 10. Implementing regulations for Proposition 65 define expose as "to cause to ingest,
27 inhale, contact via body surfaces or otherwise come into contact with a listed chemical." An
28 individual may come into contact with a listed chemical through water, air, food, consumer products

1 and any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27,
2 § 25102, subd. (i).)

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

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

16 13. Proposition 65 establishes a procedure by which the State is to develop a list of
17 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
18 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
19 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead
20 was listed as a chemical known to the State of California to cause developmental toxicity in the
21 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a
22 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.
23 27, § 27001.)

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

28 15. Proposition 65 may be enforced by any person in the public interest who provides

1 notice sixty days before filing suit to both the violator and designated law enforcement officials.
2 The failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
3 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

4 16. Proposition 65 provides that any person “violating or threatening to violate” Proposition
5 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,
6 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
7 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
8 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
9 (Health & Safety Code, § 25249.7, subd. (b)(1).)

10 V

11 **STATEMENT OF FACTS**

12 17. The To Go Brands companies have developed, manufactured, distributed and/or sold
13 the Covered Products containing lead into the State of California. To Go Brands, Inc. and Cell-
14 nique Corporation dba Healthy Brands Collective continue to do so. Consumers have been
15 ingesting these products for many years, without any knowledge of their exposure to lead, a very
16 dangerous chemical.

17 18. For many years, the To Go Brands companies have knowingly and intentionally
18 exposed numerous persons to lead, without providing a Proposition 65 warning. Prior to ERC’s
19 Notice of Violation, the To Go Brands companies failed to provide a warning on the label of the
20 Covered Products. The To Go Brands companies have at all times relevant hereto been aware that
21 the Covered Products contained lead and that persons using these products have been exposed to the
22 chemical. The To Go Brands website has represented to the public that To Go Brands “is
23 committed to creating high quality, all-natural, great tasting and easy to use products for those of us
24 striving to remain healthy.” The To Go Brands companies have been aware of the lead in the
25 Covered Products and have failed to disclose the presence of this chemical to the public, who
26 undoubtedly believed they have been ingesting totally healthy and pure products pursuant to the
27 companies’ statements.

28 19. Both prior and subsequent to ERC’s Notice of Violation, the To Go Brands companies

1 failed to provide consumers of the Covered Products with a clear and reasonable warning that they
2 have been exposed to a chemical known to the State of California to cause cancer, birth defects and
3 other
4 reproductive harm.

5 **FIRST CAUSE OF ACTION**

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

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

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

15 22. Said violations render the To Go Brands companies liable for civil penalties up to
16 \$2,500 per day, for each violation.

17 **SECOND CAUSE OF ACTION**

18 **(Declaratory Relief)**

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

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

26 **VI**

27 **PRAYER**

28 WHEREFORE ERC prays for relief as follows:

1 1. On the First Cause of Action, for civil penalties for each and every violation according to
2 proof;

3 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
4 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive orders,
5 or other orders, prohibiting the To Go Brands companies from exposing persons to lead without
6 providing clear and reasonable warning;

7 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
8 Procedure section 1060 declaring that the To Go Brands companies have exposed individuals to a
9 chemical known to the State of California to cause, birth defects and other reproductive harm
10 without providing clear and reasonable warning; and

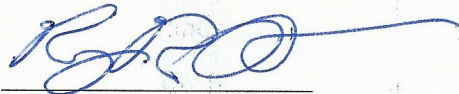
11 4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the
12 Code of Civil Procedure or the substantial benefit theory;

13 5. For costs of suit herein; and

14 6. For such other relief as the Court may deem just and proper.

15
16 Dated: May 15, 2014

17
18 By



19
20 Michael Freund
21 Ryan Hoffman
22 Attorneys for Environmental Research Center
23
24
25
26
27
28



Environmental Research Center

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

May 17, 2013

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter collectively referred to as the “Violators”) are:

To Go Brands, Inc.
Brands To Go Inc.
BioPharma Scientific LLC
Medpodium Health Products, Inc.
Cardium Therapeutics, Inc.

Exhibit A

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

- **To Go Brands Inc. Greens To Go Delicious Apple Melon Flavor – Lead**
- **BioPharma Scientific LLC Nanolean Weight Management Natural Berry – Lead**
- **BioPharma Scientific LLC Nanomeal All-In-One Meal Tropical Fruit Blend – Lead**
- **BioPharma Scientific LLC Nanoreds10 Fruit & Vegetable Superfood with Resveratrol Natural Berry – Lead**
- **BioPharma Scientific LLC Nanogreens10 Vegetable & Fruit Superfood Natural Green Apple – Lead**
- **BioPharma Scientific LLC Nanomega3 Heart, Brain & Vision Superfood Pineapple Orange – Lead**
- **To Go Brands Inc. Smoothie Complete Vanilla Berry – 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 May 17, 2010, 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 Violators violated Proposition 65 because they 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 Violators 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.

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

May 17, 2013

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Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to To Go Brands, Inc.; Brands To Go Inc.; BioPharma Scientific LLC;
Medpodium Health Products, Inc.; Cardium Therapeutics, Inc.; and their Registered
Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by To Go Brands, Inc.; Brands To Go Inc.; BioPharma Scientific LLC; Medpodium Health Products, Inc.; and Cardium Therapeutics, Inc.

I, Chris Heptinstall, 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 the Executive Director 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: May 17, 2013



Chris Heptinstall

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 May 17, 2013, 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:

President or CEO
To Go Brands, Inc.
9010 Venamar Drive, Suite 101
San Diego, CA 92121

Deren Howe
(Registered Agent of To Go Brands, Inc.)
9010 Venamar Drive, Suite 101
San Diego, CA 92121

President or CEO
Cardium Therapeutics, Inc.
3611 Valley Centre Drive, Suite 525
San Diego, CA 92130

President or CEO
Brands To Go Inc.
9010 Kenamar Drive, Suite 101
San Diego, CA 92121

Deren Howe
(Registered Agent of To Go Brands, Inc.)
9010 Kenamar Drive, Suite 101
San Diego, CA 92121

President or CEO
Medpodium Health Products, Inc.
12255 El Camino Real, Suite 250
San Diego, CA 92130

President or CEO
To Go Brands, Inc.
8505 Commerce Avenue
San Diego, CA 92121

Richard Thornton
(Registered Agent of BioPharma Scientific LLC)
5740 Fleet Street #200
Carlsbad, CA 92008

President or CEO
Cardium Therapeutics, Inc.
12255 El Camino Real, Suite 250
San Diego, CA 92130

President or CEO
BioPharma Scientific
5740 Fleet Street #200
Carlsbad, CA 92008

On May 17, 2013, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2013, 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 Priority Mail.

Executed on May 17, 2013, in Fort Oglethorpe, Georgia.


Rebecca Turner-Smith

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

May 17, 2013

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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 3 rd 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	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "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 and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). 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. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

Exposures that pose no significant risk of cancer. For chemicals that are listed 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" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

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

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

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

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: July, 2012

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