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**FILED**  
Superior Court of California  
County of San Francisco  
SEP 23 2014  
CLERK OF THE COURT  
BY: *[Signature]* Clerk

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 **FIT FOODS LTD. dba MUTANT MASS and**  
16 **DOES 1-100**

17 **Defendants.**

CASE NO. **CGC-14-541777**

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF AND  
CIVIL PENALTIES**

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

18  
19 Plaintiff Environmental Research Center hereby alleges:

20 **I**

21 **INTRODUCTION**

22 1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this  
23 action as a private attorney general enforcer and in the public interest pursuant to Health & Safety  
24 Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory relief and  
25 civil penalties to remedy Defendants Fit Foods Ltd. dba Mutant Mass and Does 1-100 (hereinafter  
26 "Fit Foods") failure to warn consumers that they have been exposed to lead from several of Fit  
27 Foods' nutritional health products. Lead is a chemical known to the State of California to cause  
28 cancer, birth defects and other reproductive harm. Based on the Safe Drinking Water and Toxic

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 Fit Foods 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. These "Covered Products" are "Fit Foods Distribution Inc.  
13 Mutant Pump," "Fit Foods Distribution Inc. Mutant Whey Vanilla Infusion Flavor," and "Fit Foods  
14 Distribution Inc. Mutant Whey Triple Chocolate Eruption Flavor". Fit Foods is a company subject  
15 to Proposition 65 as it employs ten or more persons, and has employed ten or more persons at all  
16 times relevant to this action.

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

24 **III**  
25 **JURISDICTION AND VENUE**

26 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10,  
27 which grants the Superior Courts original jurisdiction in all causes except those given by statute to  
28

1 other trial courts, because the statute under which this action is brought does not specify any other  
2 basis for jurisdiction.

3 6. This Court has jurisdiction over Fit Foods because it is a business having sufficient  
4 minimum contacts with California, or otherwise intentionally availing itself of the California  
5 market through the distribution and sale of the Covered Products in the State of California to  
6 render the exercise of jurisdiction over it by the California courts consistent with traditional  
7 notions of fair play and substantial justice.

8 7. The Complaint is based on allegations contained in a Notice of Violation dated  
9 September 13, 2013, served on the California Attorney General, other public enforcers and Fit  
10 Foods. The Notice of Violation constitutes adequate notice to Fit Foods because it provided  
11 adequate information to allow Fit Foods to assess the nature of the alleged violations, consistent  
12 with Proposition 65 and its implementing regulations. Each copy of the Notice of Violation was  
13 accompanied by a certificate of merit and a certificate of service, both of which comply with  
14 Proposition 65 and its implementing regulations. The Notice of Violation served on Fit Foods  
15 also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986  
16 (Proposition 65): A Summary". Service of the Notice of Violation and accompanying  
17 documents complied with Proposition 65 and its implementing regulations. A true and correct  
18 copy of this Notice of Violation and associated documents is attached hereto as Exhibit A. More  
19 than 60 days have passed since the Notice of Violation was mailed and no public enforcement  
20 entity has filed a complaint in this case.

21 8. This Court is the proper venue for the action because the causes of action have arisen in  
22 the County of San Francisco where some of the violations of law have occurred. Furthermore, this  
23 Court is the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code  
24 section 25249.7.

#### 25 IV

#### 26 STATUTORY BACKGROUND

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

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

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

7           11. Implementing regulations for Proposition 65 define expose as “to cause to ingest,  
8 inhale, contact via body surfaces or otherwise come into contact with a listed chemical.” An  
9 individual may come into contact with a listed chemical through water, air, food, consumer products  
10 and any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27,  
11 § 25102, subd. (i).)

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

17           13. Whenever a clear and reasonable warning is required under Health & Safety Code  
18 section 25249.6, the “method employed to transmit the warning must be reasonably calculated  
19 considering the alternative methods available under the circumstances, to make the warning  
20 message available prior to exposure.” (Cal. Code Regs., tit. 27, § 25601.) The warning requirement  
21 may be satisfied by a warning that appears on a product’s label or other labeling, shelf labeling,  
22 signs, a system of signs, public advertising identifying the system and toll-free information services,  
23 or any other system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §  
24 25603.1, subd. (a)-(d).)

25           14. Proposition 65 establishes a procedure by which the State is to develop a list of  
26 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,  
27 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the  
28 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead  
was listed as a chemical known to the State of California to cause developmental toxicity in the

1 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a  
2 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.  
3 27, § 27001.)

4 15. The Maximum Allowable Dose Level for lead as a chemical known to cause  
5 reproductive toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No  
6 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.  
7 27, § 25705.)

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

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

18 V

19 **STATEMENT OF FACTS**

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

23 19. For many years, Fit Foods has knowingly and intentionally exposed numerous persons  
24 to lead, without providing a Proposition 65 warning. Prior to ERC's Notice of Violation, Fit Foods  
25 failed to provide a warning on the label of the Covered Products. Fit Foods has at all times relevant  
26 hereto been aware that the Covered Products contained lead and that persons using these products  
27 have been exposed to the chemical. Nevertheless, the company's website touts Fit Foods'  
28 commitment to its consumers, and represents to the public that's its products are of the highest

1 quality and completely pure. Fit Foods has been aware of the lead in the Covered Products and has  
2 failed to disclose the presence of this chemical to the public, who undoubtedly believe they have  
3 been ingesting totally healthy and pure products pursuant to the company's statements.

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

8 **FIRST CAUSE OF ACTION**

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

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

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

18 23. Said violations render Fit Foods liable for civil penalties up to \$2,500 per day, for  
19 each violation.

20 **SECOND CAUSE OF ACTION**

21 **(Declaratory Relief)**

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

23 25. There exists an actual controversy relating to the legal rights and duties of the parties,  
24 within the meaning of Code of Civil Procedure section 1060, between ERC and Fit Foods  
25 concerning whether Fit Foods has exposed individuals to a chemical known to the State of  
26 California to cause cancer, birth defects and other reproductive harm without providing clear and  
27 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 Fit Foods 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 Fit Foods 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:** September 18, 2014

By



Michael Freund  
Ryan Hoffman  
Attorneys for Environmental Research Center

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

September 13, 2013

**NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

**Fit Foods Ltd. dba Mutant Mass**

**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:

**Fit Foods Distribution Inc. Mutant Pump – Lead**

**Fit Foods Distribution Inc. Mutant Whey Vanilla Infusion Flavor – Lead**

**Fit Foods Distribution Inc. Mutant Whey Triple Chocolate Eruption Flavor – 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 Violation.

**Exhibit A**

September 13 2013

Page 2

**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 Violation.** Ongoing violations have occurred every day since at least September 13, 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 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 Violation to my attention at the law office address and telephone number indicated on the letterhead or at [rrhoffma@gmail.com](mailto:rrhoffma@gmail.com).**

Sincerely,



---

Ryan Hoffman

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fit Foods Ltd. dba Mutant Mass and its Legal Correspondent 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 Violation by Fit Foods Ltd. dba Mutant Mass**

I, Ryan Hoffman, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: September 13, 2013



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Ryan Hoffman

**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 September 13, 2013, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Registered Mail:

Current President or CEO  
Fit Foods Ltd. dba Mutant Mass  
PO Box 43  
Station Main  
Port Coquitlam, BC V3C 3V5  
Canada

Current President or CEO  
Fit Foods Ltd. dba Mutant Mass  
1551 Broadway Street  
Unit 101  
Port Coquitlam, BC V3C 6N9  
Canada

Dean A. Palmer  
Legal Correspondent for Fit Foods Ltd. dba Mutant Mass  
Dean Palmer IP Law & IPR  
Box 32, Suite 950-609 West Hastings Street  
Vancouver, BC V6B 4W4  
Canada

On September 13, 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 September 13, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on September 13, 2013, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

September 13 2013

Page 5

Service List

District Attorney, Alameda County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive, Suite 245  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
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Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

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San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
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Ukiah, CA 95482

District Attorney, Merced County  
550 W. Main Street  
Merced, CA 95340

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

District Attorney, Mono County  
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Bridgeport, CA 93517

District Attorney, Monterey County  
Post Office Box 1131  
Salinas, CA 93902

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
3960 Orange Street  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95814

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Suite 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Suite 322  
San Francisco, CA 94103

District Attorney, San Joaquin County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202

District Attorney, San Luis Obispo County  
1035 Palm St, Room 450  
San Luis Obispo, CA 93408

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

District Attorney, Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

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

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive,  
Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Blvd., Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Ave, Suite 314  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street,  
16<sup>th</sup> Floor  
San Jose, CA 95113

## 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.<sup>1</sup> 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

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<sup>1</sup> 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](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 contaminant<sup>2</sup> 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.

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<sup>2</sup> 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](mailto: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.