



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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May-07-2015 1:02 pm

Case Number: CGC-15-545713

Filing Date: May-07-2015 12:57

Filed by: MARYANN E. MORAN

Juke Box: 001 Image: 04901461

COMPLAINT

ENVIRONMENTAL RESEARCH CENTER, INC. A CALIFORNIA VS. NUTIVA, INC
ET AL

001C04901461

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

NUTIVA, INC, NUTIVA, and DOES 1-100

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ENVIRONMENTAL RESEARCH CENTER, INC. a non-profit
California corporation

By Fax

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): **CGC-15-545713**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Anne Barker; ERC, Inc. 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108, 619-500-3090 (Att.1)

DATE: **MAY 07 2015** CLERK OF THE COURT, by **MARY ANN MORAN**, Deputy
(Fecha) {Secretario} (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- 1. as an individual defendant.
 - 2. as the person sued under the fictitious name of (specify):
 - 3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - 4. by personal delivery on (date):

SHORT TITLE: Environmental Research, Inc. v. Nutiva, Inc et al.	CASE NUMBER:
--	--------------

ATTACHMENT (Number): 1*(This Attachment may be used with any Judicial Council form.)*

Additional Attorneys for Plaintiff:

Michael Freund SBN 99687

Ryan Hoffman SBN 283297

Michael Freund & Associates

1919 Berkeley, CA 94704

Telephone: 510-540-1992

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page _____ of _____

(Add pages as required)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Anne Barker, SBN 253824
 Environmental Research Center, Inc.
 3111 Camino Del Rio North, Suite 400
 San Diego, CA 92108
 TELEPHONE NO.: 619-500-3090
 ATTORNEY FOR (Name): Plaintiff Environmental Research Center, Inc.

Ryan Hoffman SBN 283297
 Michael Freund & Associates
 1919 Addison Street, Suite 105
 Berkeley, CA 94704
 FAX NO.: 706-858-0326

FOR COURT USE ONLY
FILED
 Superior Court of California
 County of San Francisco
 MAY 07 2015
 CLERK OF THE COURT
 BY: *Margaret Moran*
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS: 400 McAllister Street
 CITY AND ZIP CODE: San Francisco, CA 94102
 BRANCH NAME:

CASE NAME:
 Environmental Research Center, Inc. v. Nutiva, Inc et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)
 Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CGC-15-545713**
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

By Fax

1. Check one box below for the case type that best describes this case:
- | | | |
|--|--|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<p>Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PII/PD/WD (23)
<p>Non-PII/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PII/PD/WD tort (35)
<p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
<p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
<p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20)
<p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input checked="" type="checkbox"/> Other complaint (not specified above) (42)
<p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 2
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 6, 2015
 Anne Barker

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties In Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

By Fax

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7 Telephone: (510) 540-1992
Facsimile: (510) 540-5543

8 Attorneys for Plaintiff Environmental Research Center, Inc.

F I L E D
Superior Court of California
County of San Francisco

MAY 07 2015

CLERK OF THE COURT
BY: Mary Ann Moran
Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN FRANCISCO**

12 **ENVIRONMENTAL RESEARCH**
13 **CENTER, INC. a California non-profit**
14 **corporation,**

15 **Plaintiff,**

16 v.

17 **NUTIVA, INC., NUTIVA, and DOES 1-**
18 **100**

19 **Defendants.**

CASE NO.

CGC-15-545713

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES

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

21 Plaintiff Environmental Research Center, Inc. hereby alleges:

22 **I**

23 **INTRODUCTION**

24 1. Plaintiff Environmental Research Center, Inc. (hereinafter "Plaintiff" or "ERC") brings
25 this action as a private attorney general enforcer and in the public interest pursuant to Health &
26 Safety Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory
27 relief and civil penalties to remedy the continuing failure of Defendants NUTIVA, INC., NUTIVA
28 ("Nutiva"), and DOES 1-100 (hereinafter individually referred to as "Defendant" or collectively as

1 “Defendants”) to warn consumers that they have been exposed to lead from Nutiva’s nutritional
2 health products. Lead is a chemical known to the State of California to cause cancer, birth defects
3 and other reproductive harm. Based on the Safe Drinking Water and Toxic Enforcement Act of
4 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,” businesses
5 with ten or more employees must provide a “clear and reasonable warning” prior to exposing
6 persons to these chemicals.

7
8 **II**
PARTIES

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

13 3. Defendants Nutiva, Inc. and Nutiva are each a business that manufactures, distributes
14 and/or sells the nutritional health products that have exposed users to lead in the State of California
15 within the relevant statute of limitations period. These “Covered Products” are: (1) Nutiva Hemp
16 Protein Delicious Shake Mix Vanilla; (2) Nutiva Hemp Protein 15G; and (3) Nutiva Hemp Protein
17 Delicious Shake Mix Chocolate.

18 4. Nutiva, Inc. and Nutiva are companies subject to Proposition 65 as they employ ten or
19 more persons, and have employed ten or more persons at all times relevant to this action.

20 5. Defendants Does 1-100, are named herein under fictitious names, as their true names
21 and capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each
22 of 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
24 or employees, or in some other manner, causing the harms alleged by ERC in this complaint.
25 When said true names and capacities of Does are ascertained, ERC will seek leave to amend this
26 complaint to set forth the same.

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III

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10 which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. The statute under which this action is brought does not specify any other basis for jurisdiction.

7. The Complaint is based on allegations contained in the Notice of Violation dated September 26, 2014, served on the California Attorney General, other public enforcers and Nutiva. The Notice of Violation constitutes adequate notice to Nutiva because it provided adequate information to allow Nutiva to assess the nature of the alleged violation, consistent with Proposition 65 and its implementing regulations. 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 Nutiva 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 the 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.

8. This Court has jurisdiction over Nutiva because, based on information and belief, Nutiva is a business having sufficient minimum contacts with California, or otherwise intentionally availing itself of the California market through the distribution and sale of the Covered Products in the State of California to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

9. This Court is the proper venue for the action because the causes of action have arisen in the County of San Francisco 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 2524.

1 IV

2 STATUTORY BACKGROUND

3 ~~A. Proposition 65~~

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

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

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

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

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

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

1 15. Proposition 65 establishes a procedure by which the State is to develop a list of
2 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Safety
3 Code, § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months
4 after the chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)
5 Lead was listed as a chemical known to the State of California to cause developmental toxicity in
6 the fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a
7 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs.,
8 tit. 27, § 27001.)

9 16. The Maximum Allowable Dose Level for lead as a chemical known to cause
10 developmental toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No
11 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.
12 27, § 25705.)

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

17 18. Proposition 65 provides that any person "violating or threatening to violate"
18 Proposition 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §
19 25249.7, subd. (a).) To "threaten to violate" means "to create a condition in which there is a
20 substantial probability that a violation will occur." (Health & Safety Code, § 25249.11, subd. (e).)
21 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
22 (Health & Safety Code, § 25249.7, subd. (b)(1).

23 V

24 **STATEMENT OF FACTS**

25 19. Nutiva has manufactured, distributed and/or sold the Covered Products containing
26 lead to the State of California. Consumers have been ingesting this product for many years,
27 without any knowledge of their exposure to lead, a very dangerous chemical.

28 ##

1 20. For many years, Nutiva has knowingly and intentionally exposed numerous persons to
2 lead, without providing a Proposition 65 warning. Prior to ERC's Notice of Violation, Nutiva
3 failed to provide a warning on the label of the Covered Products. Nutiva has at all times relevant
4 hereto been aware that the Covered Products contained lead and that persons using these products
5 have been exposed to this chemical. Nutiva has been aware of the lead in the Covered Products
6 and has failed to disclose the presence of this chemical to the public, who undoubtedly believed
7 they have been ingesting totally healthy and pure products.

8 21. Both prior and subsequent to ERC's Notice of Violation, Nutiva failed to provide
9 consumers of the Covered Products with a clear and reasonable warning that they have been
10 exposed to a chemical known to the State of California to cause cancer, birth defects and other
11 reproductive harm.

12 **FIRST CAUSE OF ACTION**

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

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

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

22 24. Said violations render Nutiva liable for civil penalties up to \$2,500 per day, for
23 each violation.

24 **SECOND CAUSE OF ACTION**

25 **(Declaratory Relief)**

26 25. ERC refers to paragraphs 1-24, inclusive, and incorporates them herein by this
27 reference.

28 ##

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

5 VI

6 PRAYER

7 WHEREFORE ERC prays for relief as follows:

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

10 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
11 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive
12 orders, or other orders, prohibiting Nutiva from exposing persons to lead without providing clear
13 and reasonable warning;

14 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
15 Procedure section 1060 declaring that Nutiva has exposed individuals to a chemical known to the
16 State of California to cause, birth defects and other reproductive harm without providing clear and
17 reasonable warning; and

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

20 5. For costs of suit herein; and

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

22
23 Dated: 5-6, 2015

24
25 By



26 Anne Barker

27 Attorney for Environmental Research Center, Inc.

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EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

September 26, 2014

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged 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 attached 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 the "Violators") are:

Nutiva, Inc
Nutiva

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:

Nutiva Hemp Protein Delicious Shake Mix Vanilla – Lead
Nutiva Hemp Protein 15G - Lead
Nutiva Hemp Protein Delicious Shake Mix Chocolate - 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 September 26, 2011, 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; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

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 Nutiva, Inc; Nutiva; and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Nutiva, Inc; Nutiva

I, Chris Heptinstall, declare:

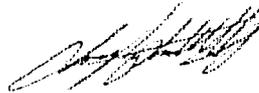
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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. 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 26, 2014

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 September 26, 2014, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Nutiva
213 West Cutting Boulevard
Richmond, CA 94804

Current President or CEO
Nutiva, Inc
2201 Sturgis Road
Oxnard, CA 93030

Current President or CEO
Nutiva, Inc
213 West Cutting Boulevard
Richmond, CA 94804

Current President or CEO
Nutiva
2201 Sturgis Road
Oxnard, CA 93030

Current President or CEO
Nutiva, Inc
760 East Santa Maria Street
Santa Paula, CA 93060

John Roulac
(Nutiva's Registered Agent for
Service of Process)
213 West Cutting Boulevard
Richmond, CA 94804

Current President or CEO
Nutiva
760 East Santa Maria Street
Santa Paula, CA 93060

National Registered Agents, Inc.
(Nutiva, Inc's Registered Agent for
Service of Process)
1535 Grant Street, Suite 140
Denver, CO 80203

On September 26, 2014 I electronically served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** 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
Post Office Box 70550
Oakland, CA 94612-0550

On September 26, 2014, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on September 26, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
 September 26, 2014
 Page 5

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 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 Ukiab, 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 Post Office Box 720 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 201 Commercial 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.