RICHARD M. FRANCO (CBN 170970)
LAW OFFICE OF RICHARD M. FRANCO
6500 Estates Drive
Oakland, CA 94611
Ph: 510-684-1022
Email: rick@rfrancolaw.com

Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED
FILED
ALAMEDA COUNTY
JUN 30 2015
CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiff,

v.

MAXIMUM HUMAN PERFORMANCE, LLC, a New Jersey Limited Liability Company,

Defendant.

Case No. RG15776150

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Health & Safety Code §25249.5, *et seq.*

Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this action in the interests of the general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the continuing failure of Defendant MAXIMUM HUMAN PERFORMANCE, LLC ("MHP" or "DEFENDANT") to warn consumers in California that they are being exposed to lead, a substance known to the State of California to cause cancer, birth defects, and other reproductive harm. DEFENDANT manufactures, packages, distributes, markets, and/or sells in California certain products containing lead (collectively, the "PRODUCTS"):

BY FAX

- Maximum Human Performance LLC MHP Up Your Mass Vanilla
- Maximum Human Performance LLC MHP A-Bomb
- Maximum Human Performance LLC MHP Dark Matter Fruit Punch
- Maximum Human Performance LLC MHP Up Your Mass Fudge Brownie
- Maximum Human Performance LLC MHP IsoFast Whey Milkshake Delicious Chocolate Milkshake

2. Lead (hereinafter, the "LISTED CHEMICAL") is a substance known to the State[1] of California to cause cancer, birth defects, and other reproductive harm.

3. The use and/or handling of the PRODUCTS causes exposures to the LISTED CHEMICAL at levels requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code") §25249.5, *et seq.* (also known as "Proposition 65"). DEFENDANT has failed to provide the health hazard warnings required by Proposition 65.

4. DEFENDANT's past sales and continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS without the required health hazard warnings, cause individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICAL that violate Proposition 65.

5. PLAINTIFF seeks injunctive relief enjoining DEFENDANT from the continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in California without provision of clear and reasonable warnings regarding the risks of cancer, birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order compelling DEFENDANT to bring its business practices into compliance with Proposition 65 by providing a clear and reasonable warning to each individual who has been and who in the

[1] All statutory and regulatory references herein are to California law, unless otherwise specified.

future may be exposed to the LISTED CHEMICAL from the use of the PRODUCTS. PLAINTIFF also seeks an order compelling DEFENDANT to identify and locate each individual person who in the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures to the LISTED CHEMICAL.

6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil penalties up to the maximum civil penalty of $2,500 per day per exposure authorized by Proposition 65 to remedy DEFENDANT's failure to provide clear and reasonable warnings regarding exposures to the LISTED CHEMICAL.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action 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.

8. This Court has jurisdiction over DEFENDANT because, based on information and belief, DEFENDANT 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 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. Venue in this action is proper in the Alameda Superior Court because the DEFENDANT has violated California law in the County of Alameda.

PARTIES

10. PLAINTIFF is a non-profit corporation organized under California's Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety, and corporate responsibility.

11. ERC is a person within the meaning of H&S Code §25118 and brings this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

12. DEFENDANT is a limited liability company organized under the State of New Jersey's law and is a person doing business within the meaning of H&S Code §25249.11.

13. DEFENDANT has manufactured, packaged, distributed, marketed and/or sold the PRODUCTS for sale or use in California and the County of Alameda. ERC is informed and believes, and thereupon alleges, that DEFENDANT continues to manufacture, package, distribute, market and/or sell the PRODUCTS for sale or use in California and in Alameda County.

STATUTORY BACKGROUND

14. The People of the State of California have declared in Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

15. To effect this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to substances listed by the State of California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent part:

> No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual....

16. "'Knowingly' refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required." (27 California Code of Regulations ("CCR") § 25102(n).)

17. Proposition 65 provides that any person "violating or threatening to violate" the

statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase "threatening to violate" is defined to mean creating "a condition in which there is a substantial likelihood that a violation will occur." (H&S Code §25249.11(e)). Violators are liable for civil penalties of up to $2,500 per day for each violation of the Act. (H&S Code §25249.7.)

FACTUAL BACKGROUND

18. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. Lead became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable" warning requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.;* H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR § 25805(b).)

19. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject to the warning requirement one year later and were therefore subject to the "clear and reasonable" warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR § 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b) (1).)

20. To test DEFENDANT's PRODUCTS for lead, PLAINTIFF hired a well-respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF of DEFENDANT's PRODUCTS show that the PRODUCTS tested were in violation of the 0.5 µg/day "safe harbor" daily dose limit set forth in Proposition 65's regulations. Very significant is the fact that people are being exposed to lead through ingestion as opposed to other methods of exposure such as dermal exposure. Ingestion of lead produces much higher exposure levels and health risks than does dermal exposure to this chemical.

21. At all times relevant to this action, DEFENDANT, therefore, has knowingly and intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED

CHEMICAL without first giving a clear and reasonable warning to such individuals.

22. The PRODUCTS have been sold by DEFENDANT for use in California since at least February 13, 2012. The PRODUCTS continue to be distributed and sold in California without the requisite warning information.

23. On February 13, 2015, ERC served DEFENDANT and each of the appropriate public enforcement agencies with a document entitled "Notice of Violations of California Health & Safety Code Section 25249.5" (the "Notice"). The Notice provided DEFENDANT and the public enforcement agencies with notice that DEFENDANT was in violation of Proposition 65 for failing to warn purchasers and users of the PRODUCTS that the use of the PRODUCTS exposes them to lead, a chemical known to the State of California to cause cancer and/or reproductive toxicity (a true and correct copy of the Notice is attached hereto as **Exhibit A** and incorporated by reference).

24. As a proximate result of acts by DEFENDANT, as a person in the course of doing business within the meaning of Health & Safety Code §25249.11, individuals throughout the State of California, including in the County of Alameda, have been exposed to the LISTED CHEMICAL without a clear and reasonable warning. The individuals subject to the illegal exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons exposed to the PRODUCTS.

FIRST CAUSE OF ACTION
(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the PRODUCTS described in the February 13, 2015 Notice)
Against DEFENDANT

25. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 26, inclusive, as if specifically set forth herein.

26. On February 13, 2015, PLAINTIFF sent the Notice of Proposition 65 violations to the requisite public enforcement agencies, and to DEFENDANT. The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the

statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violators. The Notice included, *inter alia,* the following information: the name, address, and telephone number of the noticing parties; the name of the alleged violators; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations, including the chemicals involved, the routes of toxic exposure, and the specific product or type of product causing the violations, and was issued as follows:

a. DEFENDANT was provided a copy of the Notice by Certified Mail.

b. DEFENDANT was provided a copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of CCR §25903.

c. The California Attorney General was provided a copy of the Notice via online submission.

d. The California Attorney General was provided with a Certificate of Merit by the attorney for the noticing parties, stating that there is a reasonable and meritorious case for this action, and attaching factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code §25249.7(h) (2).

27. At least 60 days have elapsed since PLAINTIFF sent the Notice to DEFENDANT. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against DEFENDANT based on the allegations herein.

28. By committing the acts alleged in this Complaint, DEFENDANT, at all times relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use

or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

29. By the above-described acts, DEFENDANT has violated H&S Code § 25249.6 and is therefore subject to an injunction ordering DEFENDANT to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings to DEFENDANT's past customers who purchased or used the PRODUCTS without receiving a clear and reasonable warning.

30. An action for injunctive relief under Proposition 65 is specifically authorized by Health & Safety Code §25249.7(a).

31. By committing, and continuing to commit, the acts alleged in this Complaint, DEFENDANT has caused irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury to the citizens of the State of California by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED CHEMICAL through the use and/or handling of the PRODUCTS.

Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth hereafter.

SECOND CAUSE OF ACTION
(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the PRODUCTS described in PLAINTIFF's NOTICE)
Against DEFENDANT

32. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 31, inclusive, as if specifically set forth herein.

33. By committing the acts alleged in this Complaint, DEFENDANT at all times relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first

providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

34. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code §25249.7(b), for a civil penalty of $2,500 per day per violation for each unlawful exposure to the LISTED CHEMICAL from the PRODUCTS.

Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth hereafter.

PRAYER FOR RELIEF

Wherefore, PLAINTIFF accordingly prays for the following relief:

A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b), enjoining DEFENDANT, its agents, employees, assigns and all persons acting in concert or participating with DEFENDANT, from distributing or selling the PRODUCTS in California without first providing a clear and reasonable warning, within the meaning of Proposition 65, that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICAL;

B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling DEFENDANT to identify and locate each individual who has purchased the PRODUCTS since February 13, 2012, and to provide a warning to such person that the use of the PRODUCTS will expose the user to chemicals known to cause cancer, birth defects and other reproductive harm;

C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b), against DEFENDANT in the amount of $2,500 per day for each violation of Proposition 65;

D. an award to PLAINTIFF of its reasonable attorney's fees and costs of suit pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further application to the Court; and

E. such other and further relief as may be just and proper.

DATED: June 30, 2015

LAW OFFICE OF RICHARD M. FRANCO

Richard M. Franco
Attorney for Plaintiff
Environmental Research Center, Inc.

Exhibit A

LAW OFFICE OF RICHARD M. FRANCO

6500 ESTATES DRIVE
OAKLAND, CA 94611
510.684.1022
RICK@RFRANCOLAW.COM

VIA CERTIFIED MAIL

Current CEO or President
Maximum Human Performance, LLC
21 Dwight Place
Fairfield, NJ 07004

Current CEO or President
Maximum Human Performance, LLC
165 Clinton Road
West Caldwell, NJ 07006

Corporation Service Company
(Maximum Human Performance, LLC's
Registered Agent for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

Corporation Service Company
(Maximum Human Performance, LLC's
Registered Agent for Service of Process)
830 Bear Tavern Road
Ewing, NJ 08628

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

VIA ONLINE SUBMISSION

Office of the California Attorney General

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Maximum Human Performance, LLC

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **Maximum Human Performance LLC MHP Up Your Mass Vanilla - Lead**
- **Maximum Human Performance LLC MHP A-Bomb - Lead**
- **Maximum Human Performance LLC MHP Dark Matter Fruit Punch - Lead**
- **Maximum Human Performance LLC MHP Up Your Mass Fudge Brownie - Lead**
- **Maximum Human Performance LLC MHP IsoFast Whey Milkshake Delicious Chocolate Milkshake - 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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

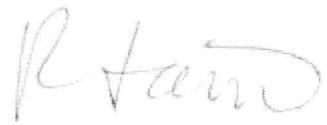
The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since February 13, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to

the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rick Franco

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Maximum Human Performance, LLC and its Registered Agent 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 Maximum Human Performance, LLC

I, Rick Franco, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged 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 chemical that is 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: February 13, 2015

R Franco

Rick Franco

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 February 13, 2015, 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 CEO or President
Maximum Human Performance, LLC
21 Dwight Place
Fairfield, NJ 07004

Corporation Service Company
(Maximum Human Performance, LLC's
Registered Agent for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

Current CEO or President
Maximum Human Performance, LLC
165 Clinton Road
West Caldwell, NJ 07006

Corporation Service Company
(Maximum Human Performance, LLC's
Registered Agent for Service of Process)
830 Bear Tavern Road
Ewing, NJ 08628

On February 13, 2015, 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
Oakland, CA 94612-0550

On February 13, 2015, 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 February 13, 2015, in Fort Oglethorpe, Georgia.

Tiffany Capehart

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 4th 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
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

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

District Attorney, Mendocino County
Post Office Box 1000
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
Post Office Box 617
Bridgeport, CA 93517

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

District Attorney, Napa County
Post Office Box 720
Napa, CA 94559

District Attorney, Nevada County
201 Commercial 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, 2nd 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 Francsico, 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., 3rd 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 12th 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 2nd 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,
16th 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.[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 until12 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[2] 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.