

**SUMMONS
(CITACION JUDICIAL)**

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

DIET DIRECT, INC., a North Carolina corporation, and DOES 1 – 25

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

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

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

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 21 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, Deputy

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.

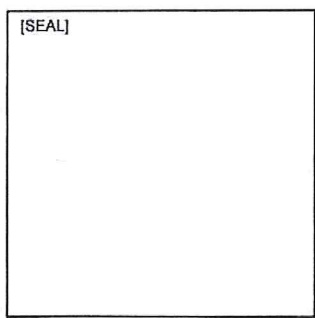
The name and address of the court is:
(El nombre y dirección de la corte es): Alameda Superior Court
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER:
(Número del Caso):
RG15790424

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):
Matthew C. Maclear, 7425 Fairmount Ave., El Cerrito, CA 94530 (415) 568-5200

DATE: **OCT 21 2015** Clerk, by Maria Carrera, 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

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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):
- by personal delivery on (date):

COPY **FAXED**

ENDORSED
FILED
ALAMEDA COUNTY

OCT 21 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, Deputy

1 MATTHEW C. MACLEAR (SBN 209228)
2 ANTHONY M. BARNES (SBN 199048)
3 AQUA TERRA AERIS LAW GROUP
4 7425 Fairmount Ave.
5 El Cerrito, CA 94530
6 Ph: 415-568-5200
7 Email: mcm@atalawgroup.com

8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

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

15 Plaintiff,

16 v.

17 DIET DIRECT, INC., a North Carolina)
18 corporation, and DOES 1 – 25,)

19 Defendants.)

Case No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
OTHER RELIEF**

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

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

INTRODUCTION

22 1. This action seeks to remedy the continuing failure of Defendants DIET DIRECT,
23 INC. (“DIET DIRECT”) and DOES 1-25 (hereinafter individually referred to as
24 “DEFENDANT” or collectively as “DEFENDANTS”) to warn consumers in California that they
25 are being exposed to lead, a substance known to the State of California to cause cancer, birth
26 defects, and other reproductive harm. According to the Safe Drinking Water and Toxics
27 Enforcement Act of 1986, Health and Safety Code (“H&S Code”) section 25249.5 (also known
28 as and referred to hereinafter as “Proposition 65”), businesses must provide persons with a “clear
and reasonable warning” before exposing individuals to chemicals known to the state to cause

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1 cancer or reproductive harm. DEFENDANTS manufacture, package, distribute, market, and/or
2 sell in California certain products containing lead (the “PRODUCTS”):

- 3 • Wonderslim Nutrition Bar Mint Cocoa
- 4 • Wonderslim Nutrition Bar Dark Chocolate Marshmallow
- 5 • Wonderslim Pudding/Shake Mocha Cream
- 6 • Wonderslim Pudding/Shake Cocomint Cream
- 7 • Wonderslim Pudding/Shake Chocolate Cream
- 8 • Wonderslim Pudding/Shake Dark Cocoa Cream
- 9 • Wonderslim Pudding/Shake Vanilla Cream
- 10 • Wonderslim Pudding/Shake Hazelnut Cocoa Cream
- 11 • Wonderslim Pudding/Shake Strawberry Cream
- 12 • Wonderslim Hot Drink Creamy Cappuccino
- 13 • WonderSlim Mommy Slim Strawberry Shake
- 14 • WonderSlim Mommy Slim Chocolate Shake
- 15 • WonderSlim Mommy Slim Mocha Shake
- 16 • WonderSlim Mommy Slim Vanilla Shake
- 17 • WonderSlim Gourmet Shake Chocolate
- 18 • Diet Direct BariWise Hot Chocolate Amaretto
- 19 • WonderSlim Soup Chicken flavored & Vegetable Cream
- 20 • Diet Direct BariWise Soup Tomato

21 2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the State of
22 California to cause cancer, birth defects, and other reproductive harm.

23 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
24 CHEMICAL at levels requiring a “clear and reasonable warning” under Proposition 65.
25 DEFENDANTS exposed consumers, users and handlers to the LISTED CHEMICAL and have
26 failed to provide the health hazard warnings required by Proposition 65.

27 4. DEFENDANTS’ continued manufacturing, packaging, distributing, marketing
28 and/or sales of the PRODUCTS without the required health hazard warnings, causes individuals

1 to be involuntarily, unknowingly and unwittingly exposed to levels of the LISTED CHEMICAL
2 that violate Proposition 65.

3 **PARTIES**

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

7 6. ERC is a person within the meaning of H&S Code §25249.11 and brings this
8 enforcement action in the public interest pursuant to H&S Code §25249.7(d). H&S Code §
9 25249.7 (d) specifies that actions to enforce Proposition 65 may be brought by a person in the
10 public interest, provided certain notice requirements and no other public prosecutor is diligently
11 prosecuting an action for the same violation(s).

12 7. DIET DIRECT is now, and was at all times relevant herein, a corporation organized
13 under the laws of North Carolina and is doing business in California within the meaning of H&S
14 Code §25249.11.

15 8. DEFENDANTS own, administer, direct, control and/or operate facilities and/or
16 agents, distributors sellers, marketers or other retail operations who place its PRODUCTS into
17 the stream of commerce in California (including but not limited to Alameda County) under the
18 brand name DIET DIRECT® and other brand names, which contain the LISTED CHEMICAL
19 without first giving clear and reasonable warnings.

20 9. DEFENDANTS, separately and each of them, are or were, at all times relevant to the
21 claims in this Complaint and continuing through the present, legally responsible for compliance
22 with the provisions of Proposition 65. Whenever an allegation regarding any act of a
23 DEFENDANT is made herein, such allegation shall be deemed to mean that DEFENDANT, or
24 its agent, officer, director, manager, supervisor or employee did or so authorized such acts while
25 engaged in the affairs of DEFENDANT's business operations and/or while acting within the
26 course and scope of their employment or while conducting business for DEFENDANT(S) for a
27 commercial purpose.
28

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm." (Section 1(b) of Initiative Measure, Proposition 65).

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

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

9 17. An exposure to a chemical in a consumer product is one "which results from a
10 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
11 consumer good, or any exposure that results from receiving a consumer service." (Cal. Code
12 Regs., tit. 22, § 12601, subd. (b).)

13 18. Proposition 65 provides that any "person who violates or threatens to violate" the
14 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase
15 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
16 probability that a violation will occur" (H&S Code §25249.11(e)). Violators are liable for civil
17 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

18 **FACTUAL BACKGROUND**

19 19. On February 27, 1987, the State of California officially listed lead as a chemical
20 known to cause reproductive toxicity. Lead became subject to the warning requirement one year
21 later and was therefore subject to the "clear and reasonable" warning requirements of Proposition
22 65 beginning on February 27, 1988. (27 California Code of Regulations ("CCR") §25000, *et*
23 *seq.*; H&S Code §25249.5, *et seq.*).

24 20. On October 1, 1992, the State of California officially listed lead and lead compounds
25 as chemicals known to cause cancer. Lead and lead compounds became subject to the warning
26 requirement one year later and were therefore subject to the "clear and reasonable" warning
27 requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et seq.*; H&S
28 Code §25249.6, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose level for

1 lead is 0.5 ug/day (micrograms a day) for reproductive toxicity and the no significant risk level
2 for carcinogens is 15ug/day (oral).

3 21. To test DEFENDANTS' PRODUCTS for lead, PLAINTIFF hired a well-respected
4 and accredited testing laboratory that designed the testing protocol used and approved by the
5 California Attorney General years ago for testing heavy metals. The results of testing undertaken
6 by PLAINTIFF of DEFENDANTS' PRODUCTS show that the PRODUCTS tested were in
7 violation of the 0.5 ug/day and/or 15 ug/day "safe harbor" daily dose limits set forth in
8 Proposition 65's regulations. Very significant is the fact that people are being exposed to lead
9 through ingestion as opposed to other not as harmful methods of exposure such as dermal
10 exposure. Ingestion of lead produces much higher exposure levels and health risks than does
11 dermal exposure to this chemical.

12 22. At all times relevant to this action, DEFENDANTS, therefore, have knowingly and
13 intentionally exposed the users, consumers and/or handlers of the PRODUCTS to the LISTED
14 CHEMICAL without first giving a clear and reasonable warning to such individuals.

15 23. The PRODUCTS have allegedly been sold by DEFENDANTS for use in California
16 since at least June 5, 2012. The PRODUCTS continue to be distributed and sold in California
17 without the requisite warning information.

18 24. On June 5, 2015, ERC served DEFENDANTS and each of the appropriate public
19 enforcement agencies with a document entitled "Notice of Violations of California Health &
20 Safety Code Section 25249.5" that provided DEFENDANTS and the public enforcement
21 agencies with notice that DEFENDANTS were in violation of Proposition 65 for failing to warn
22 purchasers and individuals using the PRODUCTS that the use of the PRODUCTS exposes them
23 to lead, a chemical known to the State of California to cause cancer and/or reproductive toxicity
24 ("Prop. 65 Notice"). A true and correct copy of the **60-Day Notice is attached hereto as Exhibit**
25 **A**, is hereby incorporated by reference, and is available on the Attorney General's website
26 located at <http://oag.ca.gov/prop65>.

27 25. As a proximate result of acts by DEFENDANTS, as persons in the course of doing
28 business within the meaning of Health & Safety Code §25249.11, individuals throughout the

1 State of California, including in the County of Alameda have been exposed to the LISTED
2 CHEMICAL without a clear and reasonable warning on the PRODUCTS. The individuals
3 subject to the violative exposures include normal and foreseeable users of the PRODUCTS, as
4 well as all other persons exposed to the PRODUCTS.

5 26. On June 5, 2015, Plaintiff sent a 60-Day Notice of Proposition 65 violations
6 (“NOTICE”) to the requisite public enforcement agencies, and to DIET DIRECT. The NOTICE
7 was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and
8 the statute's implementing regulations regarding the notice of the violations to be given to certain
9 public enforcement agencies and to the violator. The NOTICE included, *inter alia*, the following
10 information: the name, address, and telephone number of the noticing individual; the name of
11 the alleged violator; the statute violated; the approximate time period during which violations
12 occurred; and descriptions of the violations including the chemicals involved, the routes of toxic
13 exposure, and the specific product or type of product causing the violations.

14 27. DIET DIRECT was provided copies of the NOTICE and the document entitled "The
15 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which
16 is also known as Appendix A to Title 27 of CCR §25903, via Certified Mail.

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

23 29. After expiration of the sixty (60) day notice period, The appropriate public
24 enforcement agencies have failed to commence and diligently prosecute a cause of action under
25 H&S Code §25249.5, *et seq.* against DEFENDANTS based on the allegations herein. The Parties
26 entered into two agreements tolling the statute of limitations. The first tolling period extended the
27 statute of limitations from August 5, 2015 through September 30, 2015. The second tolling
28 agreement extended the original tolling period from September 30 to October 15, 2015. Pursuant

1 to these agreements, any statute(s) of limitation for any claims PLAINTIFF may have had was
2 tolled and extended as to PLAINTIFF only pursuant to the tolling agreements.

3 **FIRST CAUSE OF ACTION**
4 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
5 **the PRODUCTS described in the June 5, 2015, Prop. 65 Notice of Violation)**
6 **Against DEFENDANTS**

7 30. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 29,
8 inclusive, as if specifically set forth herein.

9 31. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant
10 to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the
11 course of doing business, knowingly and intentionally exposing individuals in California to
12 chemicals known to the State of California to cause cancer or reproductive toxicity without first
13 giving clear and reasonable warnings to such persons who use, consume or handle the
14 PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code §§ 25249.6 and
15 25249.11(f).

16 32. By the above-described acts, DEFENDANTS have violated H&S Code § 25249.6 and
17 are therefore subject to preliminary and permanent injunctions ordering DEFENDANTS to stop
18 violating Proposition 65, to provide warnings to all present and future customers, and to provide
19 warnings to DEFENDANTS' past customers who purchased or used the PRODUCTS without
20 receiving a clear and reasonable warning.

21 33. An action for injunctive relief under Proposition 65 is specifically authorized by H&S
22 Code §25249.7(a).

23 34. Continuing commission by DEFENDANTS of the acts alleged above will irreparably
24 harm the citizens of the State of California, for which harm they have no plain, speedy, or
25 adequate remedy at law.

26 35. In the absence of preliminary and then permanent injunctive relief, DEFENDANTS
27 will continue to create a substantial risk of irreparable injury by continuing to cause consumers
28 to be involuntarily, unknowingly and unwittingly exposed to the LISTED CHEMICAL through
the use, consumption and/or handling of the PRODUCTS.

1 **SECOND CAUSE OF ACTION**

2 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
3 **PRODUCTS described in the June 5, 2015, Prop. 65 Notice of Violation)**
4 **Against DEFENDANTS**

5 36. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 35,
6 inclusive, as if specifically set forth herein.

7 37. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant
8 to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the
9 course of doing business, knowingly and intentionally exposing individuals in California to
10 chemicals known to the State of California to cause cancer or reproductive toxicity without first
11 giving clear and reasonable warnings to such persons who use, consume or handle the
12 PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code §§ 25249.6 and
13 25249.11(f).

14 38. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
15 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure
16 to the LISTED CHEMICAL from the PRODUCTS, in an amount in excess of \$1 million.

17 **THE NEED FOR INJUNCTIVE RELIEF**

18 39. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through 38,
19 as if set forth below.

20 40. By committing the acts alleged in this Complaint, DEFENDANTS have caused
21 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
22 of equitable relief, DEFENDANTS will continue to create a substantial risk of irreparable
23 injury by continuing to cause consumers to be involuntarily and unwittingly exposed to the
24 LISTED CHEMICAL through the use and/or handling of the PRODUCTS.

25 **PRAYER FOR RELIEF**

26 Wherefore, PLAINTIFF prays for the following relief:

27 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
28 enjoining DEFENDANTS, their agents, employees, assigns and all persons acting in concert or
participating with DEFENDANTS, from manufacturing, distributing, marketing or selling the

1 PRODUCTS in California without first providing a clear and reasonable warning, within the
2 meaning of Proposition 65, that the users and/or handlers of the PRODUCTS are exposed to the
3 LISTED CHEMICAL;

4 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
5 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS since
6 June 5, 2012, and to provide a warning to such person that the use of the PRODUCTS will expose
7 the user to chemicals known to cause cancer, birth defects, and other reproductive harm;

8 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
9 against DEFENDANTS in the amount of \$2,500 per day for each violation of Proposition 65, in
10 an amount in excess of \$1 million, according to proof;

11 D. An award to PLAINTIFF of its reasonable attorney's fees and costs of suit
12 pursuant to California Code of Civil Procedure §§ 1032 *et. seq* and 1021.5, as PLAINTIFF shall
13 specify in further applications to the Court; and,

14 E. Such other and further relief as may be just and proper.

15
16 DATED: October 21, 2015

AQUA TERRA AERIS LAW GROUP

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18 

19 Matthew C. Maclear
20 Anthony M. Barnes
21 Attorneys for Plaintiff
22 Environmental Research Center, Inc.
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EXHIBIT A

27 CCR Appendix A

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 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 those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical 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

1 exposures are exempt from the warning requirement under certain circumstances discussed
2 below.

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

7 **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

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

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

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

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

19 **Exposures that pose no significant risk of cancer.** For chemicals that are listed as known to
20 the State to cause cancer (“carcinogens”), a warning is not required if the business can
21 demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that
22 the exposure is calculated to result in not more than one excess case of cancer in 100,000
23 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No
24 Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are
25 exempt from the warning requirement. See OEHHA’s website at:
26 <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of
27 the regulations for information concerning how these levels are calculated.

28 **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 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

1 requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level
2 feasible. Regulations explaining this exemption can be found in Section 25501.

3 ***Discharges that do not result in a “significant amount” of the listed chemical entering into***
4 ***any source of drinking water.*** The prohibition from discharges into drinking water does not
5 apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has
6 not, does not, or will not pass into or probably pass into a source of drinking water, and that the
7 discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A
8 “significant amount” means any detectable amount, except an amount that would meet the “no
9 significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no
10 observable effect” level for chemicals that cause reproductive toxicity, if an individual were
11 exposed to such an amount in drinking water.

12 *HOW IS PROPOSITION 65 ENFORCED?*

13 Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney
14 General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private
15 parties acting in the public interest, but only after providing notice of the alleged violation to the
16 Attorney General, the appropriate district attorney and city attorney, and the business accused of
17 the violation. The notice must provide adequate information to allow the recipient to assess the
18 nature of the alleged violation. The notice must comply with the information and procedural
19 requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A
20 private party may not pursue an independent enforcement action under Proposition 65 if one of
21 the governmental officials noted above initiates an action within sixty days of the notice.
22 A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500
23 per day for each violation. In addition, the business may be ordered by a court of law to stop
24 committing the violation.

25 *FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

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

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

32 ² See Section 25501(a)(4).

33 Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5
34 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

35 **HISTORY**

36 1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section
37 11343.4(d) (Register 97, No. 17).

38 2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

39 3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title
40 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant
41 to section 100, title 1, California Code of Regulations (Register 2008, No. 25).

42 4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).

1 This database is current through 10/17/14 Register 2014, No. 42
2 27 CCR Appendix A, 27 CA ADC Appendix A

3 **END OF**
4 **DOCUMENT**

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6 [Documents In Sequence](#)

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