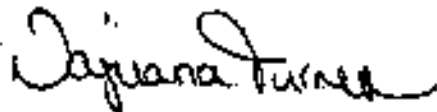


1 Michael Freund SBN 99687  
Ryan Hoffman SBN 283297  
2 Michael Freund & Associates  
1919 Addison Street, Suite 105  
3 Berkeley, CA 94704  
4 Telephone: (510) 540-1992  
Facsimile: (510) 540-5543



5 Attorneys for Plaintiff Environmental Research Center, Inc.

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

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

11 **Plaintiff,**

12 **vs.**

13 **RIGHT WAY NUTRITION, LLC AND HCG**  
14 **PLATINUM, LLC and DOES 1-100**

15 **Defendants.**

**CASE NO.**

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

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

16 Plaintiff Environmental Research Center hereby alleges:

17 **I**

18 **INTRODUCTION**

19  
20 1. Plaintiff Environmental Research Center, Inc. (hereinafter "Plaintiff" or "ERC") brings this  
21 action as a private attorney general enforcer and in the public interest pursuant to Health & Safety Code  
22 section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health  
23 & Safety Code section 25249.5 et seq.) also known as "Proposition 65," mandates that businesses with  
24 ten or more employees must provide a "clear and reasonable warning" prior to exposing any individual  
25 to a chemical known to the state to cause cancer or reproductive toxicity. Lead is a chemical known to  
26 the State of California to cause cancer, birth defects and other reproductive harm. This complaint seeks  
27 injunctive and declaratory relief and civil penalties to remedy the ongoing failure of Defendants Right  
28 Way Nutrition, LLC and HCG Platinum, LLC and Does 1-100 (hereinafter "Defendants") to warn

1 consumers that they have been exposed to lead from several nutritional health products at levels  
2 requiring a warning pursuant to Health & Safety Code section 25249.6.

3  
4 **II**

5 **PARTIES**

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

10 3. Defendants are businesses that develop, manufacture, distribute and/or sell nutritional health  
11 products that have exposed users to lead in the State of California within the relevant statute of  
12 limitations period. These "Covered Products" are RightWay Nutrition LipoShear (kit containing  
13 RightWay Nutrition LipoShear AM/Day and RightWay Nutrition LipoShear PM/Night); RightWay  
14 Nutrition BoostNRG; RightWay Nutrition LiverCLR; RightWay Nutrition LLC 100% Pure Garcinia  
15 Cambogia Extract 60% HCA; RightWay Nutrition VeggiFitt Chocolate Hazelnut; RightWay Nutrition  
16 VeggiFitt Vanilla Caramel; and RightWay Nutrition LLC Baddass Stack (kit containing RightWay  
17 Nutrition LLC Baddass Stack Pre Workout Fruit Punch Flavor and RightWay Nutrition LLC Baddass  
18 Stack Post Workout Grape Flavor). Defendants are companies subject to Proposition 65 as each  
19 Defendant employs ten or more persons, and have employed ten or more persons at all times relevant to  
20 this action.

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

27 **III**

28 **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10

1 which grants the Superior Court original jurisdiction in all causes except those given by statute to other  
2 trial courts. The statute under which this action is brought does not specify any other basis for  
3 jurisdiction.

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

9 7. The Complaint is based on allegations contained in a Notice of Violation dated June 24,  
10 2015, served on the California Attorney General, other public enforcers and Defendants. The Notice  
11 of Violation constitutes adequate notice to each Defendant because it provided adequate information  
12 to allow Defendants to assess the nature of the alleged violation, consistent with Proposition 65 and  
13 its implementing regulations. Each copy of the Notice of Violation was accompanied by a certificate  
14 of merit and a certificate of service, both of which comply with Proposition 65 and its implementing  
15 regulations. The Notice of Violation served on each Defendant also included a copy of "The Safe  
16 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary". Service of the  
17 Notice of Violation and accompanying documents complied with Proposition 65 and its  
18 implementing regulations. A true and correct copy of this Notice of Violation and associated  
19 documents is attached hereto as Exhibit A. More than 60 days have passed since the Notice of  
20 Violation was mailed and no public enforcement entity has filed a complaint in this case.

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

#### 24 IV

#### 25 STATUTORY BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

## 16 V

### 17 STATEMENT OF FACTS

18 18. Defendants have developed, manufactured, distributed and/or sold the Covered Products  
19 containing lead into the State of California. Consumption of the Covered Products according to the  
20 directions and/or recommendations provided for said products causes consumers to be exposed to  
21 lead at levels requiring a warning. Consumers have been ingesting these products for many years,  
22 without any knowledge of their exposure to lead, a very dangerous chemical.

23 19. Since at least June 24, 2012, Defendants have knowingly and intentionally exposed  
24 numerous persons to lead, without providing a Proposition 65 warning. Both prior and subsequent to  
25 ERC's Notice of Violation, Defendants failed to provide a warning on the label of the Covered Products.  
26 Defendants have at all times relevant hereto been aware that the Covered Products contained lead and  
27 that persons using these products have been exposed to the chemical. Through its website, Defendant  
28 Right Way Nutrition, LLC has made various representations regarding the quality, purity, and beneficial

1 nature of the company's products, as well as the steps purportedly taken to ensure these qualities:

2 "Our vision is to be the universal leader in the nutrition industry. We strive to set the  
3 standard for our competitors by creating effective products that not only produce real results, but make  
4 you feel better. The RightWay Nutrition team is dedicated to focusing on improving lives through  
5 exceptional nutrition. We strive everyday to meet these goals, believing our efforts make the world  
6 healthier and happier."

7 "Clean & Natural - RightWay Nutrition is dedicated to providing consumers with the highest  
8 quality, innovative, science-based supplements. With over 40+ products in Weight Management,  
9 Probiotics, Herbs, Sports Enhancement, Sleep Aid, Beauty and Well Being."

10 "COMPLETE NUTRITION LINE - RightWay delivers products that produce results. Quality  
11 Control and Assurance is extremely important to RightWay. Having carefully curated a team of experts  
12 to consult on every aspect of product development including the most current clinical data, results  
13 driven/clinically studied formulations, sustainable sourcing of the purest ingredients, and meticulous  
14 testing at every stage in the manufacturing process."

15 The RightWay Nutrition website discloses that its products are vegan, gluten free, natural, not tested  
16 on animals, clinically proven, non-GMO, and dairy and soy free, but fails to inform its customers that  
17 the Covered Products also contain lead.

18 Given Defendants' attention to product formulation and the testing purportedly conducted on the  
19 ingredients used in the company's products, Defendants must have been aware of the presence of lead in  
20 the Covered Products. Nevertheless, the company's website touts its commitment to consumers, and  
21 represents to the public that's its products are science-based and clinically proven. Defendants have  
22 been aware of lead in the Covered Products and have failed to disclose the presence of this chemical to  
23 the public, who undoubtedly believe they have been ingesting totally healthy and pure products pursuant  
24 to the company's statements.

25 20. Both prior and subsequent to ERC's Notice of Violation, Defendants failed to provide  
26 consumers of the Covered Products with a clear and reasonable warning that they have been exposed to  
27 a chemical known to the State of California to cause cancer, birth defects and other  
28 reproductive harm. This failure to provide a warning is ongoing.

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**FIRST CAUSE OF ACTION**

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

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

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

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

**SECOND CAUSE OF ACTION**

**(Declaratory Relief)**

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

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

**VI**

**PRAYER**

WHEREFORE ERC prays for relief as follows:

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

2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7, subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders as are necessary to prevent each Defendant from exposing persons to lead without providing clear and reasonable warning;

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


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

7           5. For costs of suit herein; and

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

9  
10 DATED: October 13, 2015

MICHAEL FREUND & ASSOCIATES

11  
12   
13 \_\_\_\_\_  
14 Michael Freund  
15 Ryan Hoffman  
16 Attorneys for Plaintiff  
17 ENVIRONMENTAL RESEARCH CENTER, INC.  
18  
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28



**EXHIBIT A**

---

**Michael Freund & Associates**

1919 Addison Street, Suite 105

Berkeley, CA 94704

Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

June 24, 2015

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged 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 Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

HCG Platinum, LLC  
RightWay Nutrition, L.L.C.

**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:

1. RightWay Nutrition LipoShear (*kit contains the below products*) - Lead
  - a. RightWay Nutrition LipoShear AM/Day
  - b. RightWay Nutrition LipoShear PM/Night
2. RightWay Nutrition BoostNRG - Lead
3. RightWay Nutrition LiverCLR - Lead
4. RightWay Nutrition LLC 100% Pure Garcinia Cambogia Extract 60% HCA - Lead
5. RightWay Nutrition VeggiFitt Chocolate Hazelnut - Lead
6. RightWay Nutrition VeggiFitt Vanilla Caramel - Lead
7. RightWay Nutrition LLC Baddass Stack (*kit contains the below products*) - Lead
  - a. RightWay Nutrition LLC Baddass Stack Pre Workout Fruit Punch Flavor
  - b. RightWay Nutrition LLC Baddass Stack Post Workout Grape Flavor

June 24, 2015

Page 2

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 this chemical 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 June 24, 2012, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, 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 chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to HCG Platinum, LLC and Right Way Nutrition, L.L.C.)

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 HCG Platinum, LLC and Right Way Nutrition, L.L.C.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 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 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: June 24, 2015



---

Michael Freund

**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 June 24, 2015, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Right Way Nutrition, L.L.C.  
2150 West Broadway Road, Suite 104  
Mesa, AZ 85202

Current President or CEO  
HCG Platinum, LLC  
2150 West Broadway Road, Suite 104  
Mesa, AZ 85202

On June 24, 2015, I verified 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)** were served on the following party when a true and correct copy thereof was uploaded 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 June 24, 2015, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on June 24, 2015, in Fort Oglethorpe, Georgia.

\_\_\_\_\_  
Phyllis Dunwoody

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

June 24, 2015

Page 5

Service List

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

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

District Attorney, Amador County  
708 Court Street  
Jackson, CA 95842

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

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

District Attorney, Colusa County  
146 Fifth Street, Suite 301  
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  
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Fresno, CA 93721

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

District Attorney, Humboldt County  
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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 Thruway 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, Mendocino County  
209 West Yaxamite Avenue  
Madras, CA 95657

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

District Attorney, Merced County  
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Merced, 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 95317

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

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

District Attorney, Nevada County  
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, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0064

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

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

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

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

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

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

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

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

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

District Attorney, Sierra County  
PO Box 437  
Downsville, CA 95936

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

District Attorney, Solano County  
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Fairfield, CA 94533

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

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

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

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

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

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

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

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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

*The "Governor's List."* Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:  
[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

***Clear and reasonable warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

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

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

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

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

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



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

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

**Exposures to Naturally Occurring Chemicals in a Food.** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4)

### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

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

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6800 or via e-mail at [P65PublicComments@oehha.ca.gov](mailto:P65PublicComments@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.