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ENDORSED
FILED
ALAMEDA COUNTY

MAY 31 2016

8 Attorneys for Plaintiff Environmental Research Center, Inc.

CLERK OF THE SUPERIOR COURT

By MICHELLE BANKS

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

12 Plaintiff,

13 vs.

14 QIVANA, LLC, and DOES 1-100

15 Defendants.
16
17

CASE NO. **RG16817735**

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES

[Toxic tort / Environmental (93)
Proposition 65, Health & Safety Code
§ 25249.5 et seq.]

18 Plaintiff Environmental Research Center, Inc. hereby alleges:

19 I

20 INTRODUCTION

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

1 civil penalties to remedy the ongoing failure of Defendants QIVANA, LLC (hereinafter
2 "QIVANA") and Does 1-100 (hereinafter individually referred to as "Defendant" or collectively
3 as "Defendants") to warn consumers that they have been exposed to lead from several of
4 QIVANA's nutritional health products at levels exceeding 0.5 micrograms per day and requiring a
5 warning pursuant to Health & Safety Code § 25249.6.

6 II

7 PARTIES

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

12 3. QIVANA is a business that develops, manufactures, markets, distributes and/or sells
13 nutritional health products that have exposed users to lead in the State of California within the
14 relevant statute of limitations period. These "Covered Products" are:

- 15 • Qivana LLC Metaboliq Shake Vanilla
- 16 • Qivana LLC Metaboliq Shake Chocolate
- 17 • Qivana LLC Metaboliq Infusions Mocha
- 18 • Qivana LLC Qore Detox
- 19 • Qivana LLC Qore Defense

20 QIVANA is a company subject to Proposition 65 as it employs ten or more persons, and has
21 employed ten or more persons at all times relevant to this action.

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

1 **III**

2 **JURISDICTION AND VENUE**

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

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

12 7. The Complaint is based on allegations contained in a Notice of Violation dated
13 November 5, 2015, served on the California Attorney General, other public enforcers, and
14 QIVANA. The Notice of Violation constitutes adequate notice to QIVANA because it provided
15 adequate information to allow QIVANA to assess the nature of the alleged violation, consistent
16 with Proposition 65 and its implementing regulations. Each copy of the Notice of Violation was
17 accompanied by a certificate of merit and a certificate of service, both of which comply with
18 Proposition 65 and its implementing regulations. The Notice of Violation served on QIVANA
19 also included a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986
20 (Proposition 65): A Summary.” Service of the Notice of Violation and accompanying
21 documents complied with Proposition 65 and its implementing regulations. A true and correct
22 copy of this Notice of Violation and associated documents is attached hereto as **Exhibit A**.
23 More than 60 days have passed since the Notice of Violation was mailed and no public
24 enforcement entity has filed a complaint in this case.

25 8. This Court is the proper venue for the action because the causes of action have arisen
26 in the County of Alameda where some of the violations of law have occurred, and will continue
27 to occur due to the ongoing sales of QIVANA’s products. Furthermore, this Court is the proper
28 venue under Code of Civil Procedure § 395.5 and Health & Safety Code § 25249.7.

1 **IV**

2 **STATUTORY BACKGROUND**

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

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

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

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

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

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

1 requiring a warning. Consumers have been ingesting these products for many years, without any
2 knowledge of their exposure to lead, a very dangerous chemical.

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

10 20. Through its website, QIVANA has made various representations regarding the
11 quality and beneficial nature of the company's products, as well as the steps purportedly taken to
12 ensure these characteristics:

- 13 • "Qivana is the world leader in bringing break-through natural products to market.
14 Qivana partners exclusively with top doctors and research scientists to only bring the
15 best and most innovative natural products to market."
- 16 • "Qivana is pioneering a revolutionary approach to natural products, bringing to
17 market only a handful of breakthrough products that are backed by world-class
18 scientists and research. Each product contains technology so advanced they are years
19 ahead of the competition. Qivana is unique in this industry because of our approach to
20 product development. While other companies have limited science behind their
21 products from their own employed researchers, Qivana partners with the world's best
22 researchers, universities and scientists in our product development process and we
23 leverage their decades of in-depth, specific research on natural solutions to healthier
24 living. The results of that approach are cutting-edge products that provide
25 unparalleled results."

26 Given the company's attention to product formulation and the team of experts employed during
27 the development and manufacturing process, QIVANA has undoubtedly been aware of the
28 presence of lead in the Covered Products. Nevertheless, the company's website touts

1 QIVANA's commitment to consumers, and represents to the public that's its products are of the
2 highest quality. QIVANA has been aware of the lead in the Covered Products and has failed to
3 disclose the presence of this chemical to the public, who undoubtedly believe they have been
4 ingesting totally healthy and pure products pursuant to the company's statements.

5 21. Both prior to and subsequent to ERC's Notice of Violation, QIVANA failed to
6 provide consumers of the Covered Products with a clear and reasonable warning that they have
7 been exposed to a chemical known to the State of California to cause cancer, birth defects and
8 other reproductive harm. This failure to warn is ongoing.

9 **FIRST CAUSE OF ACTION**

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

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

14 23. By committing the acts alleged above, QIVANA has, in the course of doing business,
15 knowingly and intentionally exposed users of the Covered Product to lead, a chemical known to
16 the State of California to cause cancer, birth defects and other reproductive harm without first
17 giving clear and reasonable warning to such individuals, within the meaning of Health & Safety
18 Code § 25249.6. In doing so, QIVANA has violated Health & Safety Code section 25249.6, and
19 continues to violate the statute with each successive sale of the Covered Products.

20 24. Said violations render QIVANA liable for civil penalties up to \$2,500
21 per day for each violation, and subject QIVANA to injunction.

22 **SECOND CAUSE OF ACTION**

23 **(Declaratory Relief)**

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

26 26. There exists an actual controversy relating to the legal rights and duties of the parties,
27 within the meaning of Code of Civil Procedure § 1060, between ERC and QIVANA concerning
28 whether QIVANA has exposed individuals to a chemical known to the State of California to

1 cause cancer, birth defects and other reproductive harm without providing clear and reasonable
2 warning.

3 VI

4 PRAYER

5 WHEREFORE ERC prays for relief as follows:

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

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

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

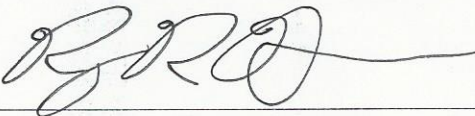
16 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
17 Procedure § 1021.5 or the substantial benefit theory;

18 5. For costs of suit herein; and

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

20
21 DATED: May 27, 2016

MICHAEL FREUND & ASSOCIATES

22
23 

24 Michael Freund
25 Ryan Hoffman
26 Attorneys for Plaintiff
27 ENVIRONMENTAL RESEARCH CENTER, INC.
28

Michael Freund & Associates

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Berkeley, CA 94704
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Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

November 5, 2015

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, 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 Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Qivana, LLC

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **Qivana LLC Metaboliq Shake Vanilla - Lead**
- **Qivana LLC Metaboliq Shake Chocolate - Lead**
- **Qivana LLC Metaboliq Infusions Mocha - Lead**
- **Qivana LLC Qore Detox - Lead**
- **Qivana LLC Qore Defense - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Exhibit A

November 5, 2015

Page 2

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to 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 November 5, 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 Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to 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 Violator 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 Qivana, LLC and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

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

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: November 5, 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 November 5, 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
Qivana, LLC
5255 Edgewood Drive, Suite 225
Provo, UT 84604

Devin Glazier
(Qivana, LLC’s Registered
Agent for Service of Process)
5255 Edgewood Drive, Suite 225
Provo, UT 84604

Current President or CEO
Qivana, LLC
5255 Edgewood Drive, Suite 125
Provo, UT 84604

National Registered Agents, Inc.
(Qivana, LLC’s Registered
Agent for Service of Process)
160 Greentree Drive, Suite 101
Dover, DE 19904

Current President or CEO
Qivana, LLC
6077 West Wells Park Road
West Jordan, UT 84081

On November 5, 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 November 5, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Yolo County District Attorney
301 2nd Street
Woodland, CA 95695
cfepd@yolocounty.org

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

November 5, 2015

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On November 5, 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 Priority Mail.

Executed on November 5, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

November 5, 2015

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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
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, 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 Francisco, CA 94103

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

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

District Attorney, San Mateo
County
400 County Ctr., 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, 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. Please refer 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.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) 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 “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. 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 Proposition 65. 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. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say 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 to that chemical. 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 Periods. 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 under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure 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 causing the exposure 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 Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering 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.

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 Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
 - Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days;
- and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**

Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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: May 2014

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>.

² See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

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