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11 Attorneys for Plaintiff
12 ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED
FILED
ALAMEDA COUNTY

NOV 28 2016

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

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

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

14 Plaintiff,

15 v.

16 USANA HEALTH SCIENCES, INC., a
17 UTAH corporation,

18 Defendant.

Case No.

RG-16840320

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

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

19
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:

22 **INTRODUCTION**

23 1. This action seeks to remedy the continuing failure of Defendant USANA
24 HEALTH SCIENCES, INC. ("USANA" or "DEFENDANT") to warn consumers in California
25 that they are being exposed to lead, a substance known to the State of California to cause
26 cancer, birth defects, and other reproductive harm. DEFENDANT manufactures, packages,

1 distributes, markets, and/or sells in California certain products containing lead. These products
2 (collectively, the “PRODUCTS”) are those identified in the 60-Day Notice of Violation
3 attached hereto as **Exhibit A** and incorporated herein by reference.

4 2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the
5 State¹ of California to cause cancer, birth defects, and other reproductive harm.

6 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
7 CHEMICAL at levels requiring a “clear and reasonable warning” under California's Safe
8 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)
9 §25249.5, *et seq.* (also known as “Proposition 65”). DEFENDANT has failed to provide the
10 health hazard warnings required by Proposition 65.

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

15 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANT from the continued
16 manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in
17 California without provision of clear and reasonable warnings regarding the risks of cancer,
18 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL
19 through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order
20 compelling DEFENDANT to bring its business practices into compliance with Proposition 65
21 by providing a clear and reasonable warning to each individual who has been and who in the
22 future may be exposed to the LISTED CHEMICAL from the use of the PRODUCTS.
23 PLAINTIFF also seeks an order compelling DEFENDANT to identify and locate each
24 individual person who in the past has purchased the PRODUCTS, and to provide to each such
25

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

1 purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures
2 to the LISTED CHEMICAL.

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

7 **JURISDICTION AND VENUE**

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

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

17 9. Venue in this action is proper in the Alameda Superior Court because the
18 DEFENDANT has violated or threatens to violate California law in the County of Alameda.

19 10. On February 19, 2016, PLAINTIFF sent a 60-Day Notice of Proposition 65
20 Violations ("NOTICE") to the requisite public enforcement agencies, and to DEFENDANT.
21 The NOTICE was issued pursuant to, and in compliance with, the requirements of H&S Code
22 §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to
23 be given to certain public enforcement agencies and to the violators. The NOTICE included,
24 *inter alia*, the following information: the name, address, and telephone number of the noticing
25 individuals; the name of the alleged violator; the statute violated; the approximate time period
26 during which violations occurred; and descriptions of the violations, including the chemical

involved, the routes of toxic exposure, and the specific product or type of product causing the violations, and was issued as follows:

- a. DEFENDANT was provided a copy of the NOTICE by Certified Mail.
- b. DEFENDANT was provided a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of CCR §25903.
- c. The California Attorney General was provided a copy of the NOTICE via online submission.
- d. The California Attorney General was provided with a Certificate of Merit by the attorney for the noticing parties, stating that there is a reasonable and meritorious case for this action, and attaching factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code §25249.7(h) (2).
- e. The district attorneys, city attorneys or prosecutors of each jurisdiction within which the PRODUCTS are offered for sale within California were provided with a copy of the NOTICE pursuant to H&S Code § 25249.7(d)(1).

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

PARTIES

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

responsibility.

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

14. DEFENDANT USANA HEALTH SCIENCES, INC. is a corporation organized under Utah's Corporation Law and is a person doing business within the meaning of H&S Code §25249.11.

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

STATUTORY BACKGROUND

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

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

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

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

19. Proposition 65 provides that any "person who violates or threatens to violate" the

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

FACTUAL BACKGROUND

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

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

22. To test DEFENDANT’s PRODUCTS for lead, PLAINTIFF hired a well-respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF of DEFENDANT’s PRODUCTS show that the PRODUCTS tested were in violation of the 0.5 µg/day for lead “safe harbor” daily dose limits set forth in Proposition 65’s regulations. Very significant is the fact that people are being exposed to lead through ingestion as opposed to other not as harmful methods of exposure such as dermal exposure. Ingestion of lead produces much higher exposure levels and health risks than dermal exposure to these chemicals.

23. At all times relevant to this action, DEFENDANT, therefore, has knowingly and

1 intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED
2 CHEMICAL without first giving a clear and reasonable warning to such individuals.

3 24. The PRODUCTS have allegedly been sold by DEFENDANT for use in
4 California since at least February 19, 2013. The PRODUCTS continue to be distributed
5 and sold in California without the requisite warning information.

6 25. On February 19, 2016, ERC served DEFENDANT and each of the appropriate
7 public enforcement agencies with a Proposition 65 NOTICE, a document entitled "Notice of
8 Violations of California Health & Safety Code Section 25249.5" that provided DEFENDANT
9 and the public enforcement agencies with notice that DEFENDANT was in violation of
10 Proposition 65 for failing to warn purchasers and individuals using the PRODUCTS that the
11 use of the PRODUCTS exposes them to lead, a chemical known to the State of California to
12 cause cancer and/or reproductive toxicity. See **Exhibit A**.

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

19 **FIRST CAUSE OF ACTION**
20 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
21 **the PRODUCTS described in the February 19, 2016**
Prop. 65 NOTICE) Against DEFENDANT

22 27. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through
23 26, inclusive, as if specifically set forth herein.

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

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

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

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

11 31. Continuing commission by DEFENDANT of the acts alleged above will
12 irreparably harm the citizens of the State of California, for which harm they have no plain,
13 speedy, or adequate remedy at law.

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

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

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

21 33. By committing the acts alleged in this Complaint, DEFENDANT at all times
22 relevant to this action, and continuing through the present, has violated H&S Code §25249.6
23 by, in the course of doing business, knowingly and intentionally exposing individuals who use
24 or handle the PRODUCTS set forth in the NOTICE to the LISTED CHEMICAL, without first
25 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
26 25249.6 and 25249.11(f).

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

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

6 **THE NEED FOR INJUNCTIVE RELIEF**

7 35. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through
8 34, as if set forth below.

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

15 **PRAYER FOR RELIEF**

16 Wherefore, PLAINTIFF accordingly prays for the following relief:

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

22 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
23 DEFENDANT to identify and locate each individual who has purchased the PRODUCTS since
24 February 19, 2013, and to provide a warning to such person that the use of the PRODUCTS
25 will expose the user to a chemical known to birth defects and other reproductive harm;

26 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),

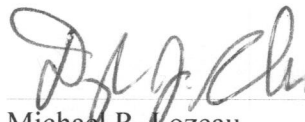
1 against DEFENDANT in the amount of \$2,500 per day for each violation of Proposition 65;

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

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

6
7 DATED: 11/28/16

LOZEAU | DRURY LLP

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10 Michael R. Lozeau
11 Richard T. Drury
12 Douglas J. Chermak
13 Attorneys for Plaintiff
14 Environmental Research Center, Inc.
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EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
USANA Health Sciences, Inc.
3838 West Parkway Boulevard
Salt Lake City, UT 84120

Corporation Service Company
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
10 East South Temple, Suite 850
Salt Lake City, UT 84133

Corporation Service Company Which Will
Do Business in California as CSC-Lawyers
Incorporating Service
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA ELECTRONIC MAIL

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900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

VIA ELECTRONIC MAIL

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220 S. Lassen Street
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daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

VIA PRIORITY MAIL

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

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

Dear Addressees:

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

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

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

USANA Health Sciences, Inc.

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

- 1. Usana Health Sciences Inc. Usana Nutrimeal Chocolate Whey- Lead**
- 2. Usana Health Sciences Inc. Usana Fudge Delite - Lead**
- 3. Usana Health Sciences Inc. Usana Nutrimeal Dutch Chocolate - Lead**
- 4. Usana Health Sciences Inc. Usana Nutrimeal French Vanilla - Lead**
- 5. Usana Health Sciences Inc. Usana Nutrimeal Wild Strawberry - Lead**
- 6. Usana Health Sciences Inc. Usana Fibergy Plus - Lead**

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

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since February 19, 2013, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

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

February 19, 2016

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

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to USANA Health Sciences, Inc. and its Registered Agents for Service of Process only)

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

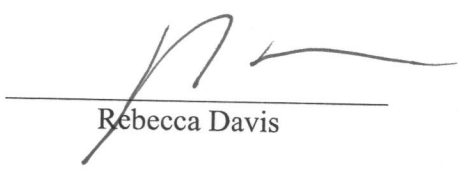
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by USANA Health Sciences, Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 19, 2016



Rebecca Davis

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On February 19, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
USANA Health Sciences, Inc.
3838 West Parkway Boulevard
Salt Lake City, UT 84120

Corporation Service Company
(USANA Health Sciences, Inc.’s
Registered Agent for Service of Process)
10 East South Temple, Suite 850
Salt Lake City, UT 84133

Corporation Service Company Which Will
Do Business in California as CSC-Lawyers
Incorporating Service
(USANA Health Sciences, Inc.’s
Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

On February 19, 2016, 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 February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney
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900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
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mlatimer@co.lassen.ca.us

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

February 19, 2016

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Woodland, CA 95695
cfepd@yolocounty.org

On February 19, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on February 19, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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, 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

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County
825 5th Street 4th Floor
Eureka, CA 95501

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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
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1400 West Lacey Boulevard
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District Attorney, Lake
County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los
Angeles County
210 West Temple Street,
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Los Angeles, CA 90012

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

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San Rafael, CA 94903

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County
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Mariposa, CA 95338

District Attorney,
Mendocino County
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Ukiah, CA 95482

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County
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Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room
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Alturas, CA 96101-4020

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County
Post Office Box 617
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201 Commercial Street
Nevada City, CA 95959

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County
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San Luis Obispo, CA 93408

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

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

District Attorney, Shasta
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832 12th Street, Ste 300
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District Attorney, Yuba
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215 Fifth Street, Suite 152
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800
Los Angeles, CA 90012

San Diego City Attorney's
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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: February 19, 2016

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: February 19, 2016

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

27 CCR Appendix A, 27 CA ADC Appendix A