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ENDORSED
FILED
ALAMEDA COUNTY

JUL 19 2016

CLERK OF THE SUPERIOR COURT
By MICHELLE BANKS Deputy

Attorneys for Plaintiff Environmental Research Center, Inc.

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

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

Plaintiff,

vs.

ALMASED USA, INC. and DOES 1-100

Defendants.

CASE NO. 16823889

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

[Toxic Tort/Environmental
Proposition 65, Health & Safety Code
Section 25249.5 et seq.]

Plaintiff Environmental Research Center, Inc. hereby alleges:

I

INTRODUCTION

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

1 penalties, to remedy the ongoing failure of Defendant Almased USA, Inc. (hereinafter
2 "Almased") and DOES 1-100 (hereinafter individually referred to as "Defendant" or
3 collectively as "Defendants"), to warn consumers that they have been exposed to lead from the
4 "COVERED PRODUCT" set forth in paragraph 3 at levels exceeding the Maximum Allowable
5 Dose Level ("MADL") for this chemical and requiring a warning pursuant to Health & Safety
6 Code Section 25249.6.

7 8 PARTIES

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

13 3. Defendant Almased is a business that develops, manufactures, markets, distributes,
14 and/or sells nutritional health products that have exposed users to lead in the State of California
15 within the relevant statute of limitations period. The COVERED PRODUCT is Almased USA
16 Inc. Almased. Almased is a company subject to Proposition 65 as it employs ten or more
17 persons, and has employed ten or more persons at all times relevant to this action.

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

25 26 III JURISDICTION AND VENUE

27 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10,
28 which grants the Superior Court original jurisdiction in all causes except those given by statute

1 to other trial courts. The statute under which this action is brought does not specify any other
2 basis for jurisdiction.

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

8 7. The Complaint is based on allegations contained in the Notice of Violation dated March
9 30, 2016, served on the California Attorney General, other public enforcers and Almased. The
10 Notice of Violation constitutes adequate notice to Almased because it provided adequate
11 information to allow Almased to assess the nature of the alleged violations, consistent with
12 Proposition 65 and its implementing regulations. A certificate of merit and a certificate of
13 service accompanied each copy of the Notice of Violation, both of which comply with
14 Proposition 65 and its implementing regulations. The Notice of Violation served on Almased
15 also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986
16 (Proposition 65): A Summary". Service of the Notice of Violation and accompanying
17 documents complied with Proposition 65 and its implementing regulations. Attached hereto as
18 **Exhibit A** is true and correct copy of this Notice of Violation and associated documents. More
19 than 60 days have passed since ERC mailed the Notice of Violation and no public enforcement
20 entity has filed a complaint in this case.

21 8. This Court is the proper venue for the action because the causes of action have arisen in
22 the County of Alameda where some of the violations of law have occurred, and will continue to
23 occur, due to the ongoing sale of Almased's product. Furthermore, venue is proper in this Court
24 under Code of Civil Procedure Section 395.5 and Health & Safety Code Section 25249.7.

25 IV

26 **STATUTORY BACKGROUND**

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

1 1986.

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

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

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

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

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

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

1 15. Lead was listed as a chemical known to the State of California to cause developmental
2 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was
3 listed as a chemical known to the State of California to cause cancer on October 1, 1992. (State
4 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986
5 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.)

6 16. The MADL for lead as a chemical known to cause reproductive toxicity is 0.5
7 micrograms per day. (Cal. Code Regs., tit. 27, §25805.) The No Significant Risk Level for lead
8 as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit. 27, §25705.)

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

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

19 V

20 **STATEMENT OF FACTS**

21 19. Almased has developed, manufactured, marketed, distributed, and/or sold the
22 COVERED PRODUCT containing lead into the State of California. Consumption of the
23 COVERED PRODUCT according to the directions and/or recommendations provided for said
24 product causes consumers to be exposed to lead at levels exceeding the 0.5 micrograms per day
25 MADL and requiring a warning. Consumers have been ingesting this product for many years,
26 without any knowledge of their exposure to lead, a very dangerous chemical.

27 20. For many years, Almased has knowingly and intentionally exposed numerous persons
28

1 to lead without providing a Proposition 65 warning. Prior to ERC's Notice of Violation and this
2 Complaint, Almased failed to provide a warning on the label of the COVERED PRODUCT.

3 Almased has at all times relevant hereto been aware that the COVERED PRODUCT contained
4 lead and that persons using these products have been exposed to this chemical. On Almased's
5 website, the company makes various representations regarding the quality and beneficial nature
6 of the company's products as well as the steps purportedly taken to ensure those qualities. The
7 quality of the product is endorsed by eight prominent German consultants, professors and
8 doctors. These statements include but are not limited to the following:
9

- 10 • "Almased is still manufactured under the same quality standards and patented processes
11 as it was when originally developed and is the best-selling weight loss product in
12 Germany".
- 13 • "Almased ... combines natural ingredients with passion in order to create products that
14 improve people's weight and support their well-being".
- 15 • "For over 25 years, research has been conducted on the effects of Almased on weight,
16 health and overall well-being".

17 21. Given Almased's attention to product formulation, quality control and many years of
18 research purportedly conducted on the ingredients used in the company's products, Almased has
19 been aware of the presence of lead in the COVERED PRODUCT and has failed to disclose the
20 presence of this chemical to the public, who undoubtedly believe they have been ingesting
21 totally healthy and pure products pursuant to the company's statements.
22

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

1 **FIRST CAUSE OF ACTION**
2 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and**
3 **Reasonable Warning under Proposition 65)**

4 23. ERC refers to paragraphs 1-22, inclusive, and incorporates them herein by this
5 reference.

6 24. By committing the acts alleged above, Almased has, in the course of doing business,
7 knowingly and intentionally exposed users of the COVERED PRODUCT to lead a chemical
8 known to the State of California to cause cancer, birth defects, and other reproductive harm,
9 without first giving clear and reasonable warning to such individuals within the meaning of
10 Health & Safety Code Section 25249.6. In doing so, Almased has violated Health & Safety
11 Code Section 25249.6, and continues to violate the statute with each successive sale of the
12 COVERED PRODUCT.

13 25. Said violations render Almased liable for civil penalties, up to \$2,500 per day for each
14 violation, and subject Almased to injunction.

15 **SECOND CAUSE OF ACTION**
16 **(Declaratory Relief)**

17 26. ERC refers to paragraphs 1-26, inclusive, and incorporates them herein by this
18 reference.

19 27. There exists an actual controversy relating to the legal rights and duties of the Parties,
20 within the meaning of Code of Civil Procedure Section 1060, between ERC and Almased,
21 concerning whether Almased has exposed individuals to a chemical known to the State of
22 California to cause cancer, birth defects, and other reproductive harm without providing clear
23 and reasonable warning.

24 **VI**

25 **PRAYER**

26 WHEREFORE ERC prays for relief as follows:

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

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

5 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
6 Procedure Section 1060 declaring that Almased has exposed individuals to lead and without
7 providing clear and reasonable warning; and

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

10 5. For costs of suit herein; and

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

12
13 DATED: July 17, 2016

MICHAEL FREUND & ASSOCIATES

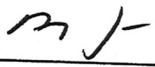
14
15 
16 _____
17 Michael Freund
18 Ryan Hoffman
19 Attorneys for Plaintiff
20 ENVIRONMENTAL RESEARCH, INC.
21
22
23
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27
28

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

March 30, 2016

**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 product 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 this product. 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:

Almased USA, Inc.

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

Almased USA Inc. Almased - 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.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of this product. 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 March 30, 2013, as well as every day since the product was 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 product. 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 this product 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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product 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 Almased USA, 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 Almased USA, Inc.

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: March 30, 2016



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 March 30, 2016, 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
Almased USA, Inc.
2861 34th Street South
Saint Petersburg, FL 33711

Bush Ross Registered Agent Services, LLC
(Almased USA, Inc.'s Registered
Agent for Service of Process)
1801 North Highland Avenue
Tampa, FL 33602

Silke M. Ullmann
(Almased USA, Inc.'s Registered
Agent for Service of Process)
350 Rhode Island Street, Suite 240
San Francisco, CA 94103

On March 30, 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 March 30, 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
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

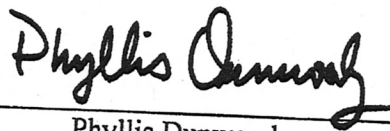
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

On March 30, 2016, 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 March 30, 2016, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

| | | | |
|--|---|--|--|
| District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612 | District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230 | District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971 | District Attorney, Sutter County 446 Second Street Yuba City, CA 95991 |
| District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120 | District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453 | District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023 | District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080 |
| District Attorney, Amador County 708 Court Street Jackson, CA 95642 | District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012 | District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004 | District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093 |
| District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965 | District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637 | District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101 | District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370 |
| District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 | District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903 | District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202 | District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901 |
| District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932 | District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338 | District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063 | Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012 |
| District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531 | District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482 | District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 | San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101 |
| District Attorney, El Dorado County 515 Main Street Placerville, CA 95667 | District Attorney, Merced County 550 W. Main Street Merced, CA 95340 | District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060 | San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102 |
| District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721 | District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020 | District Attorney, Shasta County 1355 West Street Redding, CA 96001 | San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113 |
| District Attorney, Glenn County Post Office Box 430 Willows, CA 95988 | District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517 | District Attorney, Sierra County PO Box 457 Downieville, CA 95936 | |
| District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501 | District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959 | District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097 | |
| District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243 | District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701 | District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533 | |
| District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514 | District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678 | District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354 | |
| District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301 | | | |

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: March 30, 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: March 30, 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