

ENDORSED
FILED
ALAMEDA COUNTY

NOV - 3 2016

CLERK OF THE SUPERIOR COURT
By K. Gale Deputy

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8 Attorneys for Plaintiff Environmental Research Center, Inc.

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

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

13 Plaintiff,

14 vs.

15 ROCKIN' WELLNESS INC. and DOES 1-
16 100

17 Defendants.

CASE NO. ^{RG} 16837855

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES

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

18
19 Plaintiff Environmental Research Center, Inc. hereby alleges:

20 I

21 INTRODUCTION

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

1 birth defects, and other reproductive harm. This complaint seeks injunctive and declaratory
2 relief, and civil penalties, to remedy the ongoing failure of Defendant Rockin' Wellness Inc.
3 (hereinafter "Rockin' Wellness") and DOES 1-100 (hereinafter individually referred to as
4 "Defendant" or collectively as "Defendants"), to warn consumers that they have been exposed
5 to lead and cadmium from several of Rockin' Wellness' nutritional health products at levels
6 exceeding the MADL per day and requiring a warning pursuant to Health & Safety Code
7 section 25249.6.

8 II

9 PARTIES

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

14 3. Defendant Rockin' Wellness is a business that develops, manufactures, markets,
15 distributes, and/or sells nutritional health products that have exposed users to lead and cadmium
16 in the State of California within the relevant statute of limitations period. These "SUBJECT
17 PRODUCTS" are:

- 18 • Rockin' Wellness Inc. Whole Body Nutritional Shake Cacao Chocolate
- 19 • Rockin' Wellness Inc. Total Body Nutritional Shake Vanilla Mocha Swirl

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

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

1 **III**

2 **JURISDICTION AND VENUE**

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

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

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

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

1 25249.7.

2 IV

3 **STATUTORY BACKGROUND**

4 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
5 passed as “Proposition 65” by an overwhelming majority vote of the people in November of
6 1986.

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

9 No person in the course of doing business shall knowingly and
10 intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and
12 reasonable warning to such individual, except as provided in Section
13 25249.10.

14 11. Implementing regulations for Proposition 65 define expose as “to cause to ingest, inhale,
15 contact via body surfaces or otherwise come into contact with a listed chemical.” An individual
16 may come into contact with a listed chemical through water, air, food, consumer products and
17 any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27,
18 §25102, subd. (i).)

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

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

1 information services, or any other system, that provides clear and reasonable warnings. (Cal.
2 Code Regs., tit. 27, §25603.1, subd. (a)-(d).)

3 14. Proposition 65 establishes a procedure by which the State is to develop a list of
4 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
5 §25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
6 chemical is published on the State list. (Health & Safety Code, §25249.10, subd. (b).)

7 15. Lead was listed as a chemical known to the State of California to cause developmental
8 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was
9 listed as a chemical known to the State of California to cause cancer on October 1, 1992. (State
10 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986
11 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The Maximum
12 Allowable Dose Level (“MADL”) for lead as a chemical known to cause reproductive toxicity
13 is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, §25805, subd. (b).) The No Significant
14 Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit. 27, §25705,
15 subd. (b).)

16 16. On May 1, 1997, the State of California listed the chemical cadmium as a chemical
17 known to cause reproductive toxicity. (State of California EPA OEHHA Safe Drinking Water
18 and Toxic Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer and
19 Reproductive Toxicity.) The MADL for cadmium as a chemical known to cause reproductive
20 toxicity is 4.1 micrograms per day. (Cal. Code Regs., tit. 27, § 25805, subd. (b).)

21 17. On October 1, 1987, the State of California listed the chemicals cadmium and
22 cadmium compounds as chemicals known to cause cancer. (State of California EPA OEHHA
23 Safe Drinking Water and Toxic Enforcement Act of 1986 Chemicals Known to the State to
24 Cause Cancer and Reproductive Toxicity.)

25 18. Proposition 65 provides that any person “violating or threatening to violate” Proposition
26 65 may be enjoined in any court of competent jurisdiction. (Health & Saf. Code §25249.7, subd.
27 (a).) To “threaten to violate” means “to create a condition in which there is a substantial
28 probability that a violation will occur.” (Health & Saf. Code, §25249.11, subd. (e).)

1 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
2 (Health & Saf. Code, §25249.7, subd. (b)(1).)

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

7 **V**

8 **STATEMENT OF FACTS**

9 20. Rockin' Wellness has developed, manufactured, marketed, distributed, and/or sold the
10 SUBJECT PRODUCTS containing lead and cadmium into the State of California. Consumption
11 of the SUBJECT PRODUCTS according to the directions and/or recommendations provided for
12 said product causes consumers to be exposed to lead at levels exceeding the 0.5 micrograms per
13 day MADL and/or to cadmium exceeding the 4.1 micrograms per day MADL and requiring a
14 warning. Consumers have been ingesting these products for many years, without any knowledge
15 of their exposure to lead or cadmium, very dangerous chemicals.

16 21. For many years, Rockin' Wellness has knowingly and intentionally exposed numerous
17 persons to lead and cadmium without providing a Proposition 65 warning. Prior to ERC's
18 Notice of Violation, Rockin' Wellness failed to provide a warning on the label of the SUBJECT
19 PRODUCTS. Rockin' Wellness has at all times relevant hereto been aware that the SUBJECT
20 PRODUCTS contained lead and/or cadmium and that persons using these products have been
21 exposed to these chemicals. Rockin' Wellness has been aware of the lead and cadmium in the
22 SUBJECT PRODUCTS and has failed to disclose the presence of these chemicals to the public,
23 who undoubtedly believe they have been ingesting totally healthy and pure products pursuant to
24 the company's statements.

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

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, Rockin' Wellness has, in the course of doing
7 business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to lead and
8 cadmium, chemicals known to the State of California to cause cancer, birth defects, and other
9 reproductive harm, without first giving clear and reasonable warning to such individuals within
10 the meaning of Health & Safety Code Section 25249.6. In doing so, Rockin' Wellness has
11 violated Health & Safety Code Section 25249.6, and continues to violate the statute with each
12 successive sale of the SUBJECT PRODUCTS.

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

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

17
18 26. ERC refers to paragraphs 1-25, inclusive, and incorporates them herein by this
19 reference.

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

25 **VI**

26 **PRAYER**

27 WHEREFORE ERC prays for relief as follows:

- 28 1. On the First Cause of Action, for civil penalties for each and every violation according

1 to proof;

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

6 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
7 Procedure Section 1060 declaring that Rockin' Wellness has exposed individuals to a chemical
8 known to the State of California to cause birth defects and other reproductive harm without
9 providing clear and reasonable warning; and

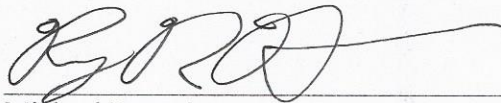
10 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
11 Procedure Section 1021.5 or the substantial benefit theory;

12 5. For costs of suit herein; and

13 6. For such other relief as the Court may deem just and proper.
14

15 DATED: November 1, 2016

MICHAEL FREUND & ASSOCIATES

16
17 

18 Michael Freund

Ryan Hoffman

Attorneys for Plaintiff

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

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

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

Rockin' Wellness Inc.

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

- 1. Rockin' Wellness Inc. Whole Body Nutritional Shake Cacao Chocolate – Lead, Cadmium**
- 2. Rockin' Wellness Inc. Total Body Nutritional Shake Vanilla Mocha Swirl - 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

Exhibit A

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals 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 products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, 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 or at rrhoffma@gmail.com.**

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Rockin' Wellness Inc.)

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 Rockin' Wellness Inc.

I, Ryan Hoffman, 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 chemicals that are 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



Ryan Hoffman

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
Rockin' Wellness Inc.
150 Oser Avenue, Unit 11354
Hauppauge, NY 11788

Current President or CEO
Rockin' Wellness Inc.
53 West End Avenue
East Quogue, NY 11942

Current President or CEO
Rockin' Wellness Inc.
2410 Farmers Avenue, Unit 13
Bellmore, NY 11710

Current President or CEO
Rockin' Wellness Inc.
69 Mall Drive
Commack, NY 11725

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

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

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

Gary Lieberstein, District Attorney
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931 Parkway Mall
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CEPD@countyofnapa.org

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

March 30, 2016

Page 5

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Anne Marie Schubert, District Attorney
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jbarnes@sonoma-county.org

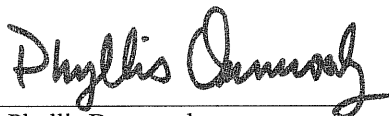
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Prop65@co.tulare.ca.us

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

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

March 30, 2016

Page 6

Service List

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

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County
708 Court Street
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
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Oroville, CA 95965

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

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Colusa, CA 95932

District Attorney, Del Norte
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Crescent City, CA 95531

District Attorney, El Dorado
County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno
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Fresno, CA 93721

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Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
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Lakeport, CA 95453

District Attorney, Los Angeles
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18000
Los Angeles, CA 90012

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

District Attorney, Marin
County
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Room 130
San Rafael, CA 94903

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Mariposa, CA 95338

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San Diego, CA 92101

District Attorney, San Joaquin
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Santa Barbara, CA 93101

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Santa Cruz, CA 95060

District Attorney, Shasta
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1355 West Street
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District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

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

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

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

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

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's
Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

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

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

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

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

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

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

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

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

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

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

The notice is reproduced here:

Page 1

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