

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 16 2016

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

1 WILLIAM F. WRAITH, SBN 185927  
2 WRAITH LAW  
24422 Avenida de la Carlota, Suite 400  
Laguna Hills, CA 92653  
3 Tel: (949) 452-1234  
Fax: (949) 452-1102

4 Attorney for Plaintiff  
5 ENVIRONMENTAL RESEARCH CENTER, INC.

6  
7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

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

12 Plaintiff,

13 v.

14 ESSANTE ORGANICS, LLC and DOES 1-  
15 25, Inclusive,

16 Defendants.

Case No.

**16842657**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

**[UNLIMITED CIVIL CASE-AMOUNT  
DEMANDED EXCEEDS \$25,000]**

17  
18 Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this  
19 action in the interests of the general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendant ESSANTE  
22 ORGANICS, LLC and DOES 1-25 (collectively referred to as "ESSANTE" or  
23 "DEFENDANTS") to warn consumers in California that they are being exposed to lead, a  
24 substance known to the State of California to cause cancer, birth defects, and other  
25 reproductive harm. ESSANTE manufactures, packages, distributes, markets, and/or sells in  
26 California the following products containing lead (collectively, the "PRODUCTS"):

- 1) Essanté Organics 7.365 PH Shake Chocolate Kiss
- 2) Essanté Organics 7.365 PH Shake Ice Cream Rave
- 3) Essante Worldwide EG Earth Greens
- 4) Essanté Organics Bee Natural
- 5) Essante Worldwide EG Earth Greens

2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the State<sup>1</sup> of California to cause cancer, birth defects, and other reproductive harm.

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

4. ESSANTE’s past sales and continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS without the required health hazard warnings, cause or threaten to cause individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICAL that violate or threaten to violate Proposition 65.

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

---

<sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.

1 person who in the past has purchased the PRODUCTS, and to provide to each such purchaser a  
2 clear and reasonable warning that the use of the PRODUCTS will cause exposures to the  
3 LISTED CHEMICAL.

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

#### 8 **JURISDICTION AND VENUE**

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

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

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

#### 20 **PARTIES**

21 10. PLAINTIFF is a non-profit corporation organized under California's  
22 Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of  
23 hazardous and toxic substances, consumer protection, worker safety, and corporate  
24 responsibility.

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

12. Defendant ESSANTE ORGANICS, LLC is an Arizona limited liability company which ERC alleges on information and belief is a person within the meaning of H&S Code §25249.11(a).

13. ESSANTE has manufactured, packaged, distributed, marketed, sold, and/or has otherwise been involved in the chain of commerce, and continues to manufacture, package, distribute, market, sell and/or otherwise be involved in the chain of commerce of the PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that Defendant employs ten or more persons, and is a “person in the course of doing business” within the meaning of Proposition 65.

14. Defendants DOES 1-25 are named herein under fictitious names, as their true names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of commerce of, and continues to manufacture, package, distribute, market, sell, and/or otherwise be involved in the chain of commerce of the PRODUCTS for sale or use in California, and/or is responsible, in some actionable manner, for the events and happenings referred to herein, either through its conduct or through the conduct of its agents, servants or employees, or in some other manner, causing the harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of DOES when ascertained.

15. Plaintiff is informed and believes and thereon alleges that each Defendant is in some manner responsible for the events set forth in this Complaint and proximately caused the injuries and damages to Plaintiff as alleged in this Complaint.

## STATUTORY BACKGROUND

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

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

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

7           18.     “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of,  
8 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No  
9 knowledge that the discharge, release or exposure is unlawful is required.” (27 California Code  
10 of Regulations (“CCR”) § 25102(n).)

11           19.     Proposition 65 provides that any “person who violates or threatens to violate” the  
12 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase  
13 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
14 probability that a violation will occur” (H&S Code §25249.11(e)). Violators are liable for civil  
15 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

#### 16                                   **FACTUAL BACKGROUND**

17           20.     On February 27, 1987, the State of California officially listed the chemical lead  
18 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
19 requirement one year later and was therefore subject to the “clear and reasonable” warning  
20 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;  
21 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose  
22 level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR  
23 § 25805(b).)

24           21.     On October 1, 1992, the State of California officially listed the chemicals lead  
25 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
26 subject to the warning requirement one year later and were therefore subject to the “clear and

reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR § 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

22. On October 4, 2016, PLAINTIFF sent a 60-Day Notice of Proposition 65 (“Notice”) violations to the requisite public enforcement agencies, and to ESSANTE. The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violators. A true and correct copy of the 60-Day Notice is attached hereto as **Exhibit A** and incorporated by reference. The Notice was issued as follows:

- a. ESSANTE and the California Attorney General were provided copies of the Notice of Violations, along with a Certificate of Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies of the Notice of Violations and Certificate of Merit.
- b. ESSANTE was provided, with the Notice of Violations, a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of CCR § 25903.
- c. The California Attorney General was provided, with the Notice of Violations, additional factual information sufficient to establish a basis for the Certificate of Merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

23. At least 60-days have elapsed since PLAINTIFF sent the Notice to ESSANTE.

1 The appropriate public enforcement agencies have failed to commence and diligently  
2 prosecute a cause of action under H&S Code §25249.5, *et seq.* against ESSANTE based on the  
3 allegations herein.

4 24. Plaintiff is informed and believes, and based on such information and  
5 belief, alleges the PRODUCTS have been marketed, distributed, and/or sold to  
6 individuals in California allegedly been sold by ESSANTE for use in California without  
7 the requisite clear and reasonable warnings before, on, and after October 4, 2013. The  
8 PRODUCTS continue to be distributed and sold in California without the requisite  
9 warning information.

10 25. As a proximate result of acts by ESSANTE, as a person in the course of doing  
11 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of  
12 California, including in the County of Alameda, have been exposed to lead without clear and  
13 reasonable warnings. The individuals subject to exposures to lead include normal and  
14 foreseeable users of the PRODUCTS, as well as all other persons exposed to the PRODUCTS.

15 26. At all times relevant to this action, ESSANTE has knowingly and intentionally  
16 exposed the users and/or handlers of the PRODUCTS to lead without first giving clear and  
17 reasonable warnings to such individuals.

18 27. Individuals using or handling the PRODUCTS are exposed to lead in excess of  
19 the “maximum allowable daily” and “no significant risk” levels determined by the State of  
20 California, as applicable.

21 28. At all times relevant to this action, each Defendant has, in the course of doing  
22 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and  
23 reasonable warning that the PRODUCTS exposure individuals to lead.

24 29. The PRODUCTS continue to be marketed, distributed, and/or sold in California  
25 without the requisite clear and reasonable warnings.  
26

**FIRST CAUSE OF ACTION**

**(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the PRODUCTS described in the October 4, 2016 Prop. 65 Notice)  
Against ESSANTE**

30. PLAINTIFF re-alleges and incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

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

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

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

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

35. Wherefore, PLAINTIFF prays for judgment against ESSANTE, as set forth hereafter.



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

36. PLAINTIFF re-alleges and incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

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

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

41. Wherefore, PLAINTIFF prays for judgment against ESSANTE, as set forth hereafter.

## THE NEED FOR INJUNCTIVE RELIEF

42. PLAINTIFF re-alleges and incorporates by this reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

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

1 **PRAYER FOR RELIEF**

2 Wherefore, PLAINTIFF accordingly prays for the following relief:

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

8 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling  
9 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS  
10 since October 4 2013, and to provide a warning to such person that the use of the PRODUCTS  
11 will expose the user to chemicals known to cause birth defects and other reproductive harm;

12 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),  
13 against ESSANTE in the amount of \$2,500 per day for each violation of Proposition 65;


14 D. An award to PLAINTIFF of its reasonable attorney's fees and costs pursuant to  
15 California Code of Civil Procedure §1021.5 or the substantial benefit theory;

16 E. An award of costs of suit herein; and

17 F. Such other and further relief as may be just and proper.

18 Dated: December 15, 2016

WRAITH LAW

19  
20 

21 By: \_\_\_\_\_

22 WILLIAM F. WRAITH  
23 Attorney for Plaintiff  
24 Environmental Research  
25 Center  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

# EXHIBIT A

**WRAITH LAW**  
24422 AVENIDA DE LA CARLOTA  
SUITE 400  
LAGUNA HILLS, CA 92653  
Tel (949) 452-1234  
Fax (949) 452-1102

October 4, 2016

**NOTICE OF VIOLATIONS 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

**Essante Organics, LLC**

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

**Essanté Organics 7.365 PH Shake Chocolate Kiss - Lead**  
**Essanté Organics 7.365 PH Shake Ice Cream Rave - Lead**  
**Essante Worldwide EG Earth Greens - Lead**  
**Essanté Organics Bee Natural - Lead**  
**Essante Worldwide EG Earth Greens – 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 these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least October 4, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Essante Organics, LLC and its Registered Agent 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  
Essante Organics, LLC**

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 4, 2016



---

William F. Wraith

**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 October 4, 2016 I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Essante Organics, LLC  
11001 North 24<sup>th</sup> Avenue  
Suite 612  
Phoenix, AZ 85029

Michael Wenniger  
(Registered Agent for Essante  
Organics, LLC)  
1145 West Southern #4  
Tempe, AZ 85282

On October 4, 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 October 4, 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](mailto:sgrassini@contracostada.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

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

October 4, 2016

Page 5

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

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> 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 October 4, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 4, 2016, in Fort Oglethorpe, Georgia



---

Phyllis Dunwoody



October 4, 2016

Page 6

**Service List**

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

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

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

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

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

District Attorney, Colusa  
County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

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

District Attorney, Fresno  
County  
2220 Tulare Street, Suite  
1000  
Fresno, CA 93721

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste  
102  
El Centro, CA 92243

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

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake  
County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los  
Angeles County  
210 West Temple Street,  
Suite 18000  
Los Angeles, CA 90012

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

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

District Attorney, Mariposa  
County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced  
County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc  
County  
204 S Court Street, Room  
202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange  
County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer  
County  
10810 Justice Center Drive,  
Ste 240  
Roseville, CA 95678

District Attorney, Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92415-  
0004

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

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

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

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

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

District Attorney, Sierra  
County  
PO Box 457  
Downieville, CA 95936

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

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

District Attorney, 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.<sup>1</sup> 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](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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering 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: October 4, 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: October 4, 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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

---

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

<sup>2</sup> 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