

1 RICHARD M. FRANCO (CBN 170970)  
LAW OFFICE OF RICHARD M. FRANCO  
2 6500 Estates Drive  
Oakland, CA 94611  
3 Ph: 510-684-1022  
Email: rick@rfrancolaw.com

4 Attorney for Plaintiff  
5 ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 08 2017

CLERK OF THE SUPERIOR COURT



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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

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

11 Plaintiff,

12 vs.

13  
14 DIRECT DIGITAL, LLC, individually and  
doing business as NUGENIX, a Delaware  
15 corporation,

16 Defendant.

Case No. **RG 17859418**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

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

21 **INTRODUCTION**

22 1. This action seeks to remedy the continuing failure of Defendant DIRECT  
23 DIGITAL, LLC, individually and doing business as NUGENIX ("DIRECT DIGITAL" or  
24 "DEFENDANT") to warn consumers in California that they are being exposed to lead, a  
25 substance known to the State of California to cause cancer, birth defects, and other  
26 reproductive harm. DEFENDANT manufactures, packages, distributes, markets, and/or sells

1 in California a certain product containing lead (the "PRODUCT"): Nugenix Ultimate  
2 Testosterone Advanced Free Testosterone Complex.

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

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

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

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

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



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

16 11. At least 60-days have elapsed since PLAINTIFF sent the Notice to

17 DEFENDANT. The appropriate public enforcement agencies have failed to commence and

18 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against

19 DEFENDANT based on the allegations herein.

20 PARTIES

21 12. 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 13. 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).





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

4 **FACTUAL BACKGROUND**

5 20. On February 27, 1987, the State of California officially listed the chemical lead  
6 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
7 requirement one year later and was therefore subject to the “clear and reasonable” warning  
8 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;  
9 H&S Code §25249.5, *et seq.*) Due to the high toxicity of lead, the maximum allowable dose  
10 level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR  
11 § 25805(b).)

12 21. On October 1, 1992, the State of California officially listed the chemicals lead  
13 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
14 subject to the warning requirement one year later and were therefore subject to the “clear and  
15 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §  
16 25000, *et seq.*; H&S Code §25249.6 *et seq.*) Due to the carcinogenicity of lead, the no  
17 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

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

25 23. At all times relevant to this action, DEFENDANT, therefore, has knowingly and  
26 intentionally exposed the users and/or handlers of the PRODUCT to the LISTED CHEMICAL

1 without first giving a clear and reasonable warning to such individuals.

2 24. The PRODUCT has allegedly been sold by DEFENDANT for use in  
3 California since at least February 24, 2014. The PRODUCT continues to be distributed  
4 and sold in California without the requisite warning information.

5 25. On February 24, 2017, ERC served DEFENDANT and each of the appropriate  
6 public enforcement agencies with a Proposition 65 Notice, a document entitled "Notice of  
7 Violations of California Health & Safety Code Section 25249.5" that provided DEFENDANT  
8 and the public enforcement agencies with notice that DEFENDANT was in violation of  
9 Proposition 65 for failing to warn purchasers and individuals using the PRODUCT that the use  
10 of the PRODUCT exposes them to lead, a chemical known to the State of California to cause  
11 cancer and/or reproductive toxicity (a true and copy of the 60-Day Notice is attached hereto as  
12 **Exhibit A** and incorporated by reference).

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

19 **FIRST CAUSE OF ACTION**  
20 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**  
21 **the PRODUCT described in the February 24, 2017, Prop. 65 Notice)**  
22 **Against DEFENDANT**

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

25 28. By committing the acts alleged in this Complaint, DEFENDANT, at all times  
26 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

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

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

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

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

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

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

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

23 33. By committing the acts alleged in this Complaint, DEFENDANT at all times  
24 relevant to this action, and continuing through the present, has violated H&S Code §25249.6  
25 by, in the course of doing business, knowingly and intentionally exposing individuals who use  
26 or handle the PRODUCT 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).



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

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

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

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DATED: 5/8/17

LAW OFFICE OF RICHARD M. FRANCO



Richard M. Franco  
Attorney for Plaintiff  
Environmental Research Center, Inc.

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# EXHIBIT A

# LAW OFFICE OF RICHARD M. FRANCO

6500 ESTATES DRIVE  
OAKLAND, CA 94611  
510.684.1022  
RICK@RFRANCOLAW.COM

## VIA CERTIFIED MAIL

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
550 South Caldwell Street, Suite 700  
Charlotte, NC 28202

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
913 West 2900 South, MS #730  
South Salt Lake, UT 84119

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
508 West 5<sup>th</sup> Street, Suite 140  
Charlotte, NC 28202

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
364 Boylston Street, 3<sup>rd</sup> Floor  
Boston, MA 02116

Corporation Service Company  
(Direct Digital, LLC, individually and  
doing business as Nugenix's Registered  
Agent for Service of Process)  
84 State Street  
Boston, MA 02109

Corporation Service Company  
(Direct Digital, LLC, individually and  
doing business as Nugenix's Registered  
Agent for Service of Process)  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

## VIA CERTIFIED MAIL

Corporation Service Company  
(Direct Digital, LLC, individually and  
doing business as Nugenix's Registered  
Agent for Service of Process)  
327 Hillsborough Street  
Raleigh, NC 27603

## VIA ELECTRONIC MAIL

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

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

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

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



**VIA ELECTRONIC MAIL**

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
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901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

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732 Brannan Street  
San Francisco, CA 94103  
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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>  
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San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District  
Attorney  
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EPU@da.sccgov.org

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

**VIA ELECTRONIC MAIL**

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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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA PRIORITY MAIL**

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

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

Dear Addressees:

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

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

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

**Direct Digital, LLC, individually and doing business as Nugenix**

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

**Nugenix Ultimate Testosterone Advanced Free Testosterone Complex - Lead**

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

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

The Violator has manufactured, marketed, distributed, and/or sold the listed product, which has exposed and continues to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of this product by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product’s label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling this product that they are being exposed

February 24, 2017

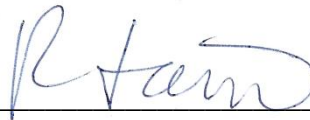
Page 4

to lead. Each of these ongoing violations has occurred on every day since February 24, 2014, as well as every day since the product was introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Franco", written over a horizontal line.

Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Direct Digital, LLC, individually and doing business as Nugenix, and its Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Direct Digital, LLC, individually and doing business as Nugenix**

I, Rick Franco, declare:

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

Dated: February 24, 2017



---

Rick Franco

**CERTIFICATE OF SERVICE**

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

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

On February 24, 2017, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
550 South Caldwell Street, Suite 700  
Charlotte, NC 28202

Corporation Service Company  
(Direct Digital, LLC, individually and  
doing business as Nugenix’s Registered  
Agent for Service of Process)  
84 State Street  
Boston, MA 02109

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
913 West 2900 South, MS #730  
South Salt Lake, UT 84119

Corporation Service Company  
(Direct Digital, LLC, individually and  
doing business as Nugenix’s Registered  
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2711 Centerville Road, Suite 400  
Wilmington, DE 19808

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
508 West 5th Street, Suite 140  
Charlotte, NC 28202

Corporation Service Company  
(Direct Digital, LLC, individually and  
doing business as Nugenix’s Registered  
Agent for Service of Process)  
327 Hillsborough Street  
Raleigh, NC 27603

Current CEO or President  
Direct Digital, LLC, individually and  
doing business as Nugenix  
364 Boylston Street, 3rd Floor  
Boston, MA 02116

On February 24, 2017, 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

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

February 24, 2017

Page 7

On February 24, 2017, 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 each of the parties listed below:

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

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

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

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

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

Anne Marie Schubert, District Attorney  
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732 Brannan Street  
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gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
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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  
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EPU@da.sccgov.org

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

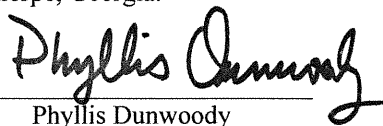
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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 February 24, 2017, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on February 24, 2017, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

February 24, 2017

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**Service List**

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

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

District Attorney, Amador  
County  
708 Court Street, 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 92401

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  
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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: February 24, 2017

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

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

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

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

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

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

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

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

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

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

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

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

### **IMPORTANT NOTES:**

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

Date: February 24, 2017

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).

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Signature of alleged violator or authorized representative Date

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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

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<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