

From: Environmental Resea Fax: (866) 234-6280

To:

Fax: (510) 267-1544

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Anne Barker (SBN 253824)</b> Environmental Research Center, Inc. 3111 Camino Del Rio North, Suite 400 San Diego, CA 92108 TELEPHONE NO.: <b>619-500-3090</b> FAX NO.: <b>706-858-0326</b> ATTORNEY FICR (Name): <b>Plaintiff Environmental Research Center, Inc.</b>		<b>FOR COURT USE ONLY</b>  <b>FILED BY FAX</b> ALAMEDA COUNTY  October 26, 2017  CLERK OF THE SUPERIOR COURT By Dajuana Turner, Deputy  CASE NUMBER: <b>RG17880587</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda</b> STREET ADDRESS: <b>1225 Fallon Street</b> MAILING ADDRESS: <b>1225 Fallon Street</b> CITY AND ZIP CODE: <b>Oakland, CA 94612</b> BRANCH NAME: <b>Rene C. Davidson</b>		
CASE NAME: <b>Environmental Research Center, Inc. v. Elemis Ltd et al.</b>		CASE NUMBER:  JUDGE:  DEPT:
<b>CIVIL CASE COVER SHEET</b> <input type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<b>Provisionally Complex Civil Litigation</b> <b>(Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	<b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)
<b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	<b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): **2**
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **October 20, 2017**

Anne Barker

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

### CASE TYPES AND EXAMPLES

#### Auto Tort

- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

#### Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

#### Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

#### Employment

- Wrongful Termination (36)
- Other Employment (15)

#### Contract

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

#### Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

#### Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

#### Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
- Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

#### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

#### Enforcement of Judgment

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment (*non-domestic relations*)
  - Sister State Judgment
  - Administrative Agency Award (*not unpaid taxes*)
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

#### Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
  - Declaratory Relief Only
  - Injunctive Relief Only (*non-harassment*)
  - Mechanics Lien
  - Other Commercial Complaint Case (*non-tort/non-complex*)
  - Other Civil Complaint (*non-tort/non-complex*)

#### Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

ELEMIS LTD, a United Kingdom limited company; (Additional Parties Attachment form is attached.)

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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

**FILED BY FAX**  
ALAMEDA COUNTY

October 26, 2017

CLERK OF  
THE SUPERIOR COURT  
By Dajuana Turner, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California, County of Alameda  
1225 Fallon Street, Oakland, California 94612

CASE NUMBER:  
(Número del Caso):  
**RG17880587**

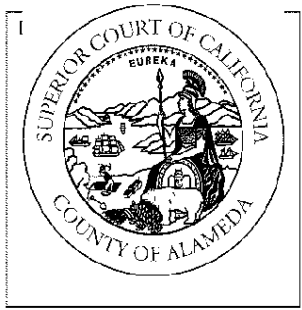
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Anne Barker, ERC, Inc., 3111 Camino Del Rio North, Ste. 400, San Diego, CA 92108 (619) 500-3090

DATE: **October 26, 2017**  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

**SUM-200(A)**

SHORT TITLE: Environmental Research Center, Inc. v. Elemis Ltd et al.	CASE NUMBER:
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**INSTRUCTIONS FOR USE**

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff   
  Defendant   
  Cross-Complainant   
  Cross-Defendant

ELEMIS USA, INC., a Florida corporation; STEINER LEISURE LIMITED, a Commonwealth of the Bahamas limited company; and DOES 1-100

From: Environmental Resea Fax: (866) 234-6280

To:

Fax: (510) 267-1544

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Anne Barker (SBN 253824)  
Environmental Research Center, Inc.  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
Telephone: 619-500-3090  
Facsimile: 706-858-0326

Attorney for Plaintiff Environmental Research Center, Inc.

**FILED BY FAX**  
ALAMEDA COUNTY  
October 26, 2017  
CLERK OF  
THE SUPERIOR COURT  
By Dajuana Turner, Deputy  
CASE NUMBER:  
**RG17880587**

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

**ENVIRONMENTAL RESEARCH CENTER,  
INC. a California non-profit  
corporation,**  
**Plaintiff,**  
**v.**  
**ELEMIS LTD, a United Kingdom limited  
company; ELEMIS USA, INC., a Florida  
corporation; STEINER LEISURE LIMITED,  
a Commonwealth of the Bahamas limited  
company; and DOES 1-100**  
**Defendants.**

**CASE NO.**  
**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF AND  
CIVIL PENALTIES**  
[Miscellaneous Civil Complaint (42)  
Proposition 65, Health & Safety Code  
Section 25249.5 et seq.]

Plaintiff Environmental Research Center, Inc. hereby alleges:

**I**  
**INTRODUCTION**

1. Plaintiff Environmental Research Center, Inc. (hereinafter "Plaintiff" or "ERC") brings this action as a private attorney general enforcer and in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as "Proposition 65," mandates that businesses with ten or more employees must provide a "clear and reasonable warning" prior to

1 exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity.  
2 Lead is a chemical known to the State of California to cause cancer, birth defects and other  
3 reproductive harm. This complaint seeks injunctive and declaratory relief and civil penalties to  
4 remedy the ongoing failure of Defendants Elemis Ltd, Elemis USA, Inc., Steiner Leisure Limited  
5 (hereinafter individually referred to as “Defendant” and collectively as “Defendants”) and Does 1-  
6 100 to warn consumers that they have been exposed to lead from several of Defendants’ nutritional  
7 health products at levels exceeding the Maximum Allowable Dose Level (“MADL”) per day and  
8 requiring a warning pursuant to Health & Safety Code section 25249.6.

## 9 II

### 10 PARTIES

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

15 3. Defendants Elemis Ltd, Elemis USA, Inc., and Steiner Leisure Limited are businesses that  
16 develop, manufacture, market, distribute and/or sell nutritional health products that have exposed  
17 users to lead in the State of California within the relevant statute of limitations period. These  
18 “Covered Products” are:

- 19 • Elemis Sp@home Vitality Body Enhancement Capsules - Lead
- 20 • Elemis Invigorating Cal-Metab Plus Body Performance - Lead
- 21 • Elemis Contouring Silhouette Body Performance - Lead
- 22 • Elemis Cleansing Deep Drainage Body Performance - Lead

23 Defendants are each a company subject to Proposition 65 as each employs ten or more persons, and  
24 have employed ten or more persons at all times relevant to this action.

25 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and  
26 capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each of  
27 said Does is responsible, in some actionable manner, for the events and happenings hereinafter  
28 referred to, either through said Defendant’s conduct, or through the conduct of its agents, servants or

1 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When  
2 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint  
3 to set forth the same.

### 4 III

#### 5 JURISDICTION AND VENUE

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

10 6. This Court has jurisdiction over Defendants because Defendants are businesses having  
11 sufficient minimum contacts with California, or otherwise intentionally availing themselves of the  
12 California market through the marketing, distribution, and/or sale of the Covered Products in the  
13 State of California to render the exercise of jurisdiction over them by the California courts consistent  
14 with traditional notions of fair play and substantial justice.

15 7. The Complaint is based on allegations contained in a Notice of Violation dated April  
16 28, 2017, served on the California Attorney General, other public enforcers, and Defendants. The  
17 Notice of Violation constitutes adequate notice to Defendants because it provided adequate  
18 information to allow Defendants to assess the nature of the alleged violations, consistent with  
19 Proposition 65 and its implementing regulations. The Notice of Violation was accompanied by  
20 a certificate of merit and a certificate of service, both of which comply with Proposition 65 and  
21 its implementing regulations. The Notice of Violation served on Defendants also included a copy  
22 of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."  
23 Service of the Notice of Violation and accompanying documents complied with Proposition 65  
24 and its implementing regulations. A true and correct copy of the Notice of Violation and  
25 associated documents served on Defendants is attached hereto as **Exhibit A**. More than 60 days  
26 have passed since the Notice of Violation was mailed and no public enforcement entity has filed  
27 a complaint in this case.

28 8. This Court is the proper venue for the action because the causes of action have arisen in

1 the County of Alameda where some of the violations of law have occurred, and will continue to  
2 occur due to the ongoing sales of Defendants' products. Furthermore, venue is proper in this Court  
3 under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

#### 4 IV

#### 5 STATUTORY BACKGROUND

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

8 10. The warning requirement of Proposition 65 is contained in Health & Safety Code section  
9 25249.6, which provides:

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

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

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

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



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

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

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

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

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

## 24 V

### 25 STATEMENT OF FACTS

26 18. Defendants have developed, manufactured, marketed, distributed and/or sold the  
27 Covered Products containing lead into the State of California. Consumption of the Covered  
28 Products according to the directions and/or recommendations provided for said product causes

1 consumers to be exposed to lead at levels exceeding the 0.5 micrograms per day MADL and  
2 requiring a warning. Consumers have been ingesting these products for many years, without any  
3 knowledge of their exposure to lead, a very dangerous chemical.

4 19. For many years, Defendants have knowingly and intentionally exposed numerous  
5 persons to lead without providing a Proposition 65 warning. Prior to ERC's Notice of Violation,  
6 Defendants failed to provide a warning on the labels of the Covered Products. Defendants have at  
7 all times relevant hereto been aware that the Covered Products contained lead and that persons using  
8 these products have been exposed to this chemical. Defendants have been aware of the lead in the  
9 Covered Products and has failed to disclose the presence of this chemical to the public, who  
10 undoubtedly believe they have been ingesting totally healthy and pure products.

11 20. Both prior and subsequent to ERC's Notice of Violation, Defendants failed to provide  
12 consumers of the Covered Products with a clear and reasonable warning that they have been exposed  
13 to a chemical known to the State of California to cause cancer, birth defects and other reproductive  
14 harm. This failure to warn is ongoing.

15 **FIRST CAUSE OF ACTION**

16 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear**  
17 **and Reasonable Warning under Proposition 65)**

18 21. ERC refers to paragraphs 1-20, inclusive, and incorporates them herein by this reference.

19 22. By committing the acts alleged above, Defendants have, in the course of doing business,  
20 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to the  
21 State of California to cause cancer, birth defects and other reproductive harm without first giving  
22 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code  
23 section 25249.6. In doing so, Defendants have violated Health & Safety Code section 25249.6, and  
24 continues to violate the statute with each successive sale of the Covered Products.

25 23. Said violations render Defendants liable for civil penalties up to \$2,500 per day, for  
26 each violation, and subject Defendants to injunction.

27 **SECOND CAUSE OF ACTION**

28 **(Declaratory Relief)**

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

2 25. There exists an actual controversy relating to the legal rights and duties of the parties,  
3 within the meaning of Code of Civil Procedure section 1060, between ERC and Defendants  
4 concerning whether Defendants have exposed individuals to a chemical known to the State of  
5 California to cause cancer, birth defects and other reproductive harm without providing clear and  
6 reasonable warning.

7 **VI**

8 **PRAYER**

9 WHEREFORE ERC prays for relief as follows:

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

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

16 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
17 Procedure section 1060 declaring that Defendants have exposed individuals to a chemical known to  
18 the State of California to cause birth defects and other reproductive harm without providing clear  
19 and reasonable warning; and

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

22 5. For costs of suit herein; and

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

24  
25 DATED: October 20, 2017

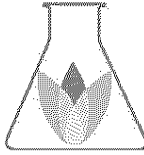
ENVIRONMENTAL RESEARCH CENTER, INC.

26  
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28 Anne Barker  
In-House Counsel for Plaintiff

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# EXHIBIT A



## Environmental Research Center

3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
619-500-3090

April 28, 2017

### NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). 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 Violators 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 Violators 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 Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Elemis Ltd**  
**Elemis USA, Inc.**  
**Steiner Leisure Limited**

**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:

1. **Elemis Sp@home Vitality Body Enhancement Capsules - Lead**
2. **Elemis Invigorating Cal-Metab Plus Body Performance - Lead**
3. **Elemis Contouring Silhouette Body Performance - Lead**
4. **Elemis Cleansing Deep Drainage Body Performance - Lead**

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

April 28, 2017

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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.

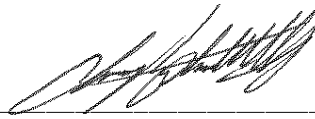
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 28, 2014, 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 Violators violated Proposition 65 because they 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.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Elemis Ltd, Elemis USA, Inc., Steiner Leisure Limited and their Registered Agents for Service of Process only)

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

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

April 28, 2017

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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Elemis Ltd; Elemis USA, Inc.; and Steiner Leisure Limited**

I, Chris Heptinstall, declare:

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

2. I am the Executive Director 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 Violators 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: April 28, 2017

  
\_\_\_\_\_  
Chris Heptinstall

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

April 28, 2017

Page 4

**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 April 28, 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 President or CEO  
Elemis Ltd  
2 Lancashire Court  
London  
W1S 1EX  
England

Current President or CEO  
Elemis Ltd  
1 Baker Street  
London  
W1U 8ED  
England

Current President or CEO  
Elemis Ltd  
92 Uxbridge Road  
Harrow  
HA3 6DQ  
England

Current President or CEO  
Elemis Ltd  
300 Nixon Lane  
Edison, NJ 08837

Current President or CEO  
Elemis USA, Inc.  
300 Nixon Lane  
Edison, NJ 08837

Current President or CEO  
Steiner Leisure Limited  
300 Nixon Lane  
Edison, NJ 08837

Current President or CEO  
Elemis Ltd  
770 South Dixie Hwy, #200  
Coral Gables, FL 33146

Current President or CEO  
Elemis USA, Inc.  
770 South Dixie Hwy, #200  
Coral Gables, FL 33146

Current President or CEO  
Steiner Leisure Limited  
770 South Dixie Hwy, #200  
Coral Gables, FL 33146

Current President or CEO  
Steiner Leisure Limited  
Suite 104A, Saffrey Square  
PO Box N-9306  
Nassau, The Bahamas

Corporation Service Company  
(Elemis USA, Inc.'s Registered Agent  
for Service of Process)  
1201 Hays Street  
Tallahassee, FL 32301

Corporation Service Company  
(Elemis USA, Inc.'s Registered Agent  
for Service of Process)  
80 State Street  
Albany, NY 12207



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

April 28, 2017

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On April 28, 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On April 28, 2017, 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](mailto:sgrassini@contracostada.org)

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

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

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

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](mailto:edobroth@co.slo.ca.us)

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

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

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

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

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

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

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

April 28, 2017

Page 6

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 April 28, 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 April 28, 2017, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

April 28, 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  
Hall of Justice  
211 West Temple St., Ste 1200  
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  
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

## 27 CCR Appendix A

**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:

Page 1

Date: April 28, 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.**



Page 2

Date: April 28, 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