

1 RICHARD T. DRURY (CBN 163559)
2 REBECCA L. DAVIS (CBN 271662)
3 LOZEAU | DRURY LLP
4 410 12th Street, Suite 250
5 Oakland, CA 94607
6 Ph: 510-836-4200
7 Fax: 510-836-4205
8 Email: richard@lozeaudrury.com
9 rebecca@lozeaudrury.com

ENDORSED
FILED
ALAMEDA COUNTY

JAN 02 2018

CLERK OF THE SUPERIOR COURT
By CORINNA GARDEN
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 COMMUNITY SCIENCE INSTITUTE, a
11 non-profit association,

12 Plaintiff,

13 vs.

14 MEAD JOHNSON NUTRITION
15 COMPANY, a Delaware corporation, and
16 MEAD JOHNSON & COMPANY, LLC, a
17 Delaware limited liability company,

18 Defendants.

Case No.:

R418887564

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

18 Plaintiff Community Science Institute ("Plaintiff") brings this action in the interests of
19 the general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendants Mead Johnson
22 Nutrition Company and Mead Johnson & Company, LLC (collectively, "Mead Johnson" or
23 "Defendants") to warn consumers in California that they are being exposed to lead, a substance
24 known to the State of California to cause cancer, birth defects, and other reproductive harm.
25 Defendants manufacture, package, distribute, market, and/or sell in California the following
26 baby formula products, which contain lead (the "Baby Formulas"):

- 27 1. Enfamil Reguline Infant Formula Milk-Based Powder with Iron
28 2. Enfamil EnfaCare Infant Formula Milk-Based Powder with Iron

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

3. Enfamil Infant Formula Milk-Based Powder with Iron
4. Enfamil A.R. Infant Formula Milk-Based Powder with Iron Thickened with Added Rice Starch
5. Enfamil Gentlease Milk-based Powder with Iron Infant Formula
6. Enfamil ProSobee Soy Infant Formula Milk-Free Lactose-Free Powder with Iron
7. Enfagrow Toddler Next Step Natural Milk Flavor Milk Drink
8. Enfagrow Gentlease Toddler Transitions Infant & Toddler Formula Milk-Based Powder with Iron
9. Enfagrow Toddler Transitions Infant & Toddler Formula Milk-Based Powder with Iron

2. Lead is a substance known to the State of California to cause cancer, birth defects, and other reproductive harm

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

4. Defendants’ past sales and continued manufacturing, packaging, distributing, marketing and/or sales of the Baby Formulas without the required health hazard warnings, causes or threatens to cause individuals, particularly babies, to be involuntarily and unwittingly exposed to levels of the chemical lead, which violates or threatens to violate Proposition 65.

5. Plaintiff seeks injunctive relief enjoining Defendants from the continued manufacturing, packaging, distributing, marketing and/or sales of the Baby Formulas in California without provision of clear and reasonable warnings regarding the risks of cancer, birth defects, and other reproductive harm posed by exposure to the chemical lead through the

1 use and/or handling of the Baby Formulas. Plaintiff seeks an injunctive order compelling
2 Defendants to bring their business practices into compliance with Proposition 65 by providing
3 a clear and reasonable warning to each individual who has been and who in the future may be
4 exposed to the chemical lead from the use of the Baby Formulas. Plaintiff also seeks an order
5 compelling Defendants to identify and locate each individual person who in the past has
6 purchased the Baby Formulas, and to provide to each such purchaser a clear and reasonable
7 warning that use of the Baby Formulas will cause exposures to the chemical lead.
8

9 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties up
10 to the maximum civil penalty of \$2,500 per day per exposure, authorized by Proposition 65, to
11 remedy Defendants' failure to provide clear and reasonable warnings regarding exposures to
12 the chemical lead.

13 JURISDICTION AND VENUE

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

18 8. This Court has jurisdiction over Defendants because Defendants are businesses
19 having sufficient minimum contacts with California, or otherwise intentionally availing
20 themselves of the California market through the distribution and sale of the Baby Formulas in
21 the State of California to render the exercise of jurisdiction over Defendants by the California
22 courts consistent with traditional notions of fair play and substantial justice.

23 9. Venue in this action is proper in the Alameda Superior Court because the
24 Defendants have violated or threaten to violate California law in the County of Alameda.

25 10. On October 26, 2017, Plaintiff sent a 60-Day Notice of Proposition 65
26 Violations ("Notice") to the requisite public enforcement agencies, and to Defendants (a true
27 and correct copy of the 60-Day Notice is attached hereto as **Exhibit A** and is incorporated by
28

1 reference). The Notice was issued pursuant to, and in compliance with, the requirements of
2 H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the
3 violations to be given to certain public enforcement agencies and to the violators. The Notice
4 included, *inter alia*, the following information: the name, address, and telephone number of the
5 noticing individuals; the name of the alleged violator; the statute violated; the approximate
6 time period during which violations occurred; and descriptions of the violations, including the
7 chemical involved, the routes of toxic exposure, and the specific product or type of product
8 causing the violations, and was issued as follows:

- 10 a. Defendants were provided a copy of the Notice by Certified Mail.
- 11 b. Defendants were provided a copy of a document entitled "The Safe
12 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
13 Summary," which is also known as Appendix A to Title 27 of CCR
14 §25903.
- 15 c. The California Attorney General was provided a copy of the Notice via
16 online submission.
- 17 d. The California Attorney General was provided with a Certificate of
18 Merit by the attorney for the noticing party, stating that there is a
19 reasonable and meritorious case for this action, and attaching factual
20 information sufficient to establish a basis for the certificate, including
21 the identity of the persons consulted with and relied on by the certifier,
22 and the facts, studies, or other data reviewed by those persons, pursuant
23 to H&S Code §25249.7(h)(2).
- 24 e. The district attorneys, city attorneys or prosecutors of each jurisdiction
25 within which the Baby Formula is offered for sale within California
26 were provided with a copy of the Notice pursuant to H&S Code §
27 25249.7(d)(1).
28

1 11. At least 60-days have elapsed since Plaintiff sent the Notice to Defendants. The
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action under H&S Code §25249.5, *et seq.* against Defendants based on the allegations
4 herein.
5

6 **PARTIES**

7 12. Plaintiff is a non-profit association. Plaintiff operates as a fiscally sponsored
8 project of the non-profit organization Social and Environmental Entrepreneurs. CSI's mission
9 is to unite consumers and industrial neighbors to reform government and industry practices for
10 a toxic free future.

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

13 14. Defendant Mead Johnson Nutrition Company is a corporation organized
14 under the State of Delaware's corporation law and is a person doing business within the
15 meaning of H&S Code §25249.11.

16 15. Defendant Mead Johnson & Company, LLC is a limited liability company
17 organized under the State of Delaware's corporation law and is a person doing business
18 within the meaning of H&S Code §25249.11.

19 16. Defendants have manufactured, packaged, distributed, marketed and /or sold the
20 Baby Formulas for sale or use in California and the County of Alameda. Plaintiff is informed
21 and believes, and thereupon alleges, that Defendants continue to manufacture, package,
22 distribute, market and/or sell the Baby Formulas for sale or use in California and in Alameda
23 County.
24

25 **STATUTORY BACKGROUND**

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

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

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

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

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

18 **FACTUAL BACKGROUND**

19 21. On February 27, 1987, the State of California officially listed the chemical lead
20 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
21 requirement one year later and was therefore subject to the “clear and reasonable” warning
22 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;
23 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose
24 level for lead is 0.5 µg/day (micrograms per day) for reproductive toxicity. (27 CCR
25 § 25805(b).)

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

1 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §
2 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
3 significant risk level for lead is 15 µg/day (micrograms per day). (27 CCR § 25705(b)(1).)
4

5 23. To test Defendants’ Baby Formulas for lead, Plaintiff hired a well-respected and
6 accredited testing laboratory. The results of testing undertaken by Plaintiff of Defendants’
7 Baby Formulas show that the Baby Formulas tested were in violation of the 0.5 µg/day for lead
8 “safe harbor” daily dose limits set forth in Proposition 65’s regulations. Very significant is the
9 fact that people, and particularly babies, are being exposed to lead through ingestion as
10 opposed to other not as harmful methods of exposure such as dermal exposure. Ingestion of
11 lead produces much higher exposure levels and health risks than dermal exposure to this
12 chemical.

13 24. At all times relevant to this action, Defendants have knowingly and
14 intentionally exposed the users of the Baby Formulas to the chemical lead without first giving a
15 clear and reasonable warning to such individuals.

16 25. On information and belief, the Baby Formulas have allegedly been sold by
17 Defendants for use in California since at least January 2, 2015. On information and
18 belief, the Baby Formulas continue to be distributed and sold in California without the
19 requisite warning information.

20 26. On October 26, 2017, Plaintiff served Defendants and each of the appropriate
21 public enforcement agencies with a Proposition 65 Notice, a document entitled “Notice of
22 Violations of California Health & Safety Code Section 25249.5,” that provided Defendants and
23 the public enforcement agencies with notice that Defendants were in violation of Proposition
24 65 for failing to warn purchasers and individuals using the Baby Formulas that the use of the
25 Baby Formulas exposes them to lead, a chemical known to the State of California to cause
26 cancer and/or reproductive toxicity.

27 27. As a proximate result of acts by Defendants, as persons in the course of doing
28

1 business within the meaning of Health & Safety Code §25249.11, individuals throughout the
2 State of California, including in the County of Alameda, have been exposed to lead without a
3 clear and reasonable warning. The individuals subject to the illegal exposures include normal
4 and foreseeable users of the Baby Formulas, as well as all other persons exposed to the Baby
5 Formulas.
6

7 **FIRST CAUSE OF ACTION**
8 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
9 **the Baby Formulas described in the October 26, 2017 Prop. 65 Notice)**
10 **By Plaintiff Against All Defendants**

11 28. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 27,
12 inclusive, as if specifically set forth herein.

13 29. By committing the acts alleged in this Complaint, Defendants, at all times
14 relevant to this action, and continuing through the present, have violated or threaten to violate
15 H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
16 individuals who use the Baby Formulas described in the Notice to the chemical lead, without
17 first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
18 25249.6 and 25249.11(f).

19 30. By the above-described acts, Defendants have violated or threaten to violate
20 H&S Code § 25249.6 and are therefore subject to an injunction ordering Defendants to stop
21 violating Proposition 65, to provide warnings to all present and future customers, and to
22 provide warnings to Defendants' past customers who purchased or used the Baby Formulas
23 without receiving a clear and reasonable warning.

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

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

1 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

2 **SECOND CAUSE OF ACTION**

3 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**
4 **Baby Formula described in the October 26, 2017 Prop. 65 Notice)**

5 **By Plaintiff Against All Defendants**

6 33. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 32,
7 inclusive, as if specifically set forth herein.

8 34. By committing the acts alleged in this Complaint, Defendants at all times
9 relevant to this action, and continuing through the present, have violated H&S Code §25249.6
10 by, in the course of doing business, knowingly and intentionally exposing individuals who use
11 or handle the Baby Formulas described in the Notice to the chemical lead, without first
12 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
13 25249.6 and 25249.11(f).

14 35. By the above-described acts, Defendants are liable, pursuant to H&S Code
15 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to
16 the chemical lead from the Baby Formulas.

17 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

18 **THE NEED FOR INJUNCTIVE RELIEF**

19 36. Plaintiff re-alleges and incorporates by this reference Paragraphs 1 through 34,
20 inclusive, as if specifically set forth herein.

21 37. By committing the acts alleged in this Complaint, Defendants have caused or
22 threaten to cause irreparable harm for which there is no plain, speedy or adequate remedy at
23 law. In the absence of equitable relief, Defendants will continue to create a substantial risk of
24 irreparable injury by continuing to cause or threatening to cause consumers and babies to be
25 involuntarily and unwittingly exposed to the chemical lead through the use and/or handling of
26 the Baby Formulas.

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PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from distributing or selling the Baby Formulas in California without first providing a clear and reasonable warning, within the meaning of Proposition 65, that the users of the Baby Formula are exposed to the chemical lead;

B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling Defendants to identify and locate each individual who has purchased the Baby Formulas since January 2, 2015, and to provide a warning to such persons that the use of the Baby Formulas will expose the users to chemicals known to birth defects and other reproductive harm;


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

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

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

DATED: January 2, 2018

LOZEAU | DRURY LLP


Rebecca L. Davis
Attorneys for Plaintiff
Environmental Research Center, Inc.

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EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

October 26, 2017

To: President or CEO – Mead Johnson Nutrition Company
President or CEO – Mead Johnson & Company, LLC
California Attorney’s Office
District Attorney’s Office for 58 counties
City Attorney’s for San Francisco, San Diego, San Jose, and Los Angeles
(See attached Certificate of Service)

From: Community Science Institute

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

Dear Addressees:

This firm represents Community Science Institute (“CSI”) 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.* (“Proposition 65”). CSI is a fiscally sponsored project of the non-profit organization Social and Environmental Entrepreneurs. CSI’s mission is to unite consumers and industrial neighbors to reform government and industry practices for a toxic free future. This letter serves to provide notification of these violations to you and to the public enforcement agencies of Proposition 65.

This letter constitutes notice that the entities listed below have violated and continue to violate provisions of Proposition 65. Specifically, the entity listed below has violated and continues to violate the warning requirement at § 25249.6 of the California Health & Safety Code, which provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...”

Violators: The name of the violators covered by this notice that violated Proposition 65 (hereinafter collectively referred to as the “Violators”) are (1) Mead Johnson Nutrition Company, and (2) Mead Johnson & Company, LLC.

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

Consumer Products: The following specific products that are the subject of this notice are causing exposures in violation of Proposition 65 are:

1. Enfamil Reguline Infant Formula Milk-Based Powder with Iron
2. Enfamil EnfaCare Infant Formula Milk-Based Powder with Iron
3. Enfamil Infant Formula Milk-Based Powder with Iron
4. Enfamil A.R. Infant Formula Milk-Based Powder with Iron Thickened with Added Rice Starch
5. Enfamil Gentlease Milk-based Powder with Iron Infant Formula
6. Enfamil ProSobee Soy Infant Formula Milk-Free Lactose-Free Powder with Iron
7. Enfagrow Toddler Next Step Natural Milk Flavor Milk Drink
8. Enfagrow Gentlease Toddler Transitions Infant & Toddler Formula Milk-Based Powder with Iron
9. Enfagrow Toddler Transitions Infant & Toddler Formula Milk-Based Powder with Iron

Violation: The alleged Violators knowingly and intentionally exposed and continue to expose consumers within the State of California to lead without providing a Proposition 65 warning. The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead.

Route of Exposure: Use of the products identified in this notice results in human exposures to lead. The primary route of exposure is ingestion, but may also occur through inhalation and/or dermal contact.

Duration of Violation: The violations have been occurring since at least October 26, 2014, and are ongoing.

A summary of Proposition 65, prepared by the California Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter sent to the Violators.

Pursuant to California Health & Safety Code § 25249.7(d), CSI intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written agreement to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, CSI 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.

CSI's Executive Director is Denny Larson, and is located at 6263 Bernhard Avenue, Richmond, California 94805, Tel. 415-845-4705. CSI has retained my firm in connection with this matter. Please direct all questions concerning this notice to me, Rebecca Davis

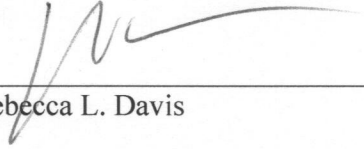
Notice of Violation of Cal. Health & Safety Code §§ 25249.5 *et seq.*

October 26, 2017

Page 3

(rebecca@lozeaudrury.com), Lozeau Drury LLP, 410 12th Street, Suite 250, Oakland, California 94607, (510) 836-4200.

Sincerely,



Rebecca L. Davis

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Community Science Institute's Notice of Proposition 65 Violations by Mead Johnson Nutrition Company and Mead Johnson & Company, LLC

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that 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 an attorney for the noticing party, Community Science Institute.
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 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(s) 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, additional factual information sufficient to establish the basis for this certificate has been served on the Attorney General, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 26, 2017



Rebecca Davis

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. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known 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 Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

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

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

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

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

² See Section 25501(a)(4).

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

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.

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 old, and am not a party to the within action. My business address is 410 12th Street, Suite 250, Oakland, California 94607, in Alameda County, where the mailing occurred.

On October 26, 2017, I served the following documents: **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** on the following entities by placing a true and correct copy thereof in a sealed envelope with postage fully prepaid for delivery by Certified Mail, addressed to the entity listed below, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Current President or CEO
Mead Johnson Nutrition Company
225 North Canal Street, 25th Floor
Chicago, IL 60606

Current President or CEO
Mead Johnson & Company, LLC
2701 Patriot Blvd. 4th Floor
Glenview, IL 60026

Corporation Service Company Which Will Do
Business in California as CSC-Lawyers
Incorporating Service (C1592199)
(Registered Agent for Service of Process for
Mead Johnson Nutrition Company)
2710 Gateway Oaks Dr. Ste. 150N
Sacramento, CA 95833

Corporation Service Company Which Will Do
Business in California As CSC-Lawyers
Incorporating Service(C1592199)
(Registered Agent for Service of Process for
Mead Johnson & Company, LLC)
2710 Gateway Oaks Dr. Ste. 150N
Sacramento, CA 95833

On October 26, 2017, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)(1)** on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On October 26, 2017, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

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

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

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

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

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

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

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

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

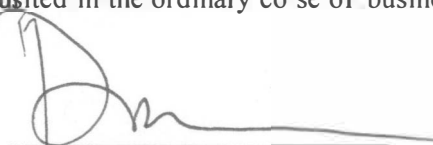
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

On October 26, 2017, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** **(2) 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 with postage fully prepaid for delivery by First Class Mail, addressed to each of the entities on the Service List attached hereto, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Executed on October 26, 2017, in Oakland, California.



Daniel Charlier-Smith

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
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 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

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