

From: Environmental Resea Fax: (856) 234-6280

To: Premium Fax Filing Alai Fax: (510) 267-5739

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Ryan Hoffman SBN 283297 Michael Freund & Associates 1919 Addison Street, Suite 105 Berkeley, CA 94704 TELEPHONE NO: 510-540-1992 FAX NO: _____ ATTORNEY FOR (Name): Plaintiff Environmental Research Center, Inc. (ERC)		FOR COURT USE ONLY FILED BY FAX ALAMEDA COUNTY June 07, 2018 CLERK OF THE SUPERIOR COURT By Alicia Espinoza, Deputy CASE NUMBER: RG18907843
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson		
CASE NAME: Environmental Research Center, Inc. v. Primal Nutrition, LLC et al.		CASE NUMBER: JUDGE: DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder 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:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <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)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <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)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <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)	Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <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)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <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)	Miscellaneous Civil Petition <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: **June 6, 2018**
Ryan Hoffman

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY - OR 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

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

PRIMAL NUTRITION, LLC; PRIMAL NUTRITION, INC.; and DOES
1-100

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

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

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

FILED BY FAX
ALAMEDA COUNTY

June 07, 2018

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, 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), 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), the California Courts Online Self-Help Center (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), 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), en el Centro de Ayuda de las Cortes de California, (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): Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612

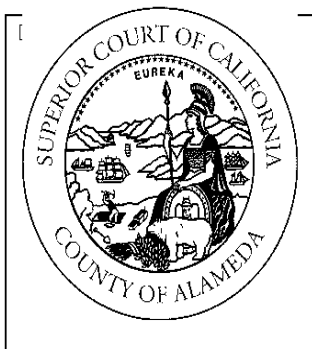
CASE NUMBER:
(Número del Caso):
RG18907843

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):
Ryan Hoffman; 1919 Addison Street, Suite 105 Berkeley, CA 94704 (Digital T-1 (510) 540-1992)

DATE: June 07, 2018
(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: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

From: Environmental Resea Fax: (856) 234-6280

To: Premium Fax Filing Alai Fax: (510) 267-5739

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1 Ryan Hoffman SBN 283297
2 Michael Freund & Associates
3 1919 Addison Street, Suite 105
4 Berkeley, CA 94704
5 Telephone: (510) 540-1992
6 Facsimile: (510) 540-5543

7 Attorneys for Plaintiff Environmental Research Center, Inc.

FILED BY FAX
ALAMEDA COUNTY

June 07, 2018

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:
RG18907843

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

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

12 **Plaintiff,**

13 **vs.**

14 **PRIMAL NUTRITION, LLC; PRIMAL**
15 **NUTRITION, INC.; and DOES 1-100**

16 **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.]

17
18
19 Plaintiff Environmental Research Center, Inc. hereby alleges:

20 **I**

21 **INTRODUCTION**

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

1 defects, and other reproductive harm. This complaint seeks injunctive and declaratory relief and
2 civil penalties to remedy the ongoing failure of Defendants Primal Nutrition, LLC and Primal
3 Nutrition, Inc. (collectively “Primal Nutrition”) and Does 1-100 (hereinafter individually
4 referred to as “Defendant” or collectively as “Defendants”), to warn consumers that they have
5 been exposed to lead from a number of Primal Nutrition’s nutritional health products as set
6 forth in paragraph 3 at levels exceeding the applicable Maximum Allowable Dose Level
7 (“MADL”) and requiring a warning pursuant to Health & Safety Code section 25249.6.

8 II

9 PARTIES

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

14 3. Primal Nutrition is a business that develops, manufactures, markets, distributes, and/or
15 sells nutritional health products that have exposed users to lead in the State of California within
16 the relevant statute of limitations period. These “SUBJECT PRODUCTS” (as identified in the
17 Notice of Violation dated March 27, 2018 attached hereto as **Exhibit A**) are: (1) Primal Damage
18 Control Micronutrient SuperFormula, (2) Primal Master Formula, (3) Primal Kitchen Chocolate
19 Coconut Primal Fuel Low-Carb Meal Replacement Shake, and (4) Primal Kitchen Collagen
20 Fuel Chocolate Coconut Grass-Fed Collagen Peptide Drink Mix. Primal Nutrition is a company
21 subject to Proposition 65 as it employs ten or more persons and has employed ten or more
22 persons at all times relevant to this action.

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

1 to amend this complaint to set forth the same.

2 **III**

3 **JURISDICTION AND VENUE**

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

8 6. This Court has jurisdiction over Primal Nutrition because Primal Nutrition has sufficient
9 minimum contacts with California, and otherwise intentionally avails itself of the California
10 market through the marketing, distribution, and/or sale of the SUBJECT PRODUCTS in the
11 State of California so as to render the exercise of jurisdiction over it by the California courts
12 consistent with traditional notions of fair play and substantial justice.

13 7. The Complaint is based on allegations contained in the Notice of Violation dated
14 March 27, 2018, served on the California Attorney General, other public enforcers, and Primal
15 Nutrition. The Notice of Violation constitutes adequate notice to Primal Nutrition because it
16 provided adequate information to allow Primal Nutrition to assess the nature of the alleged
17 violations, consistent with Proposition 65 and its implementing regulations. A certificate of
18 merit and a certificate of service accompanied each copy of the Notice of Violation, and both
19 certificates comply with Proposition 65 and its implementing regulations. The Notice of
20 Violation served on Primal Nutrition also included a copy of “The Safe Drinking Water and
21 Toxic Enforcement Act of 1986 (Proposition 65): A Summary.” Service of the Notice of
22 Violation and accompanying documents complied with Proposition 65 and its implementing
23 regulations. Attached hereto as **Exhibit A** is a true and correct copy of this Notice of Violation
24 and associated documents. More than 60 days have passed since ERC mailed the Notice of
25 Violation and no public enforcement entity has filed a complaint in this case.

26 8. This Court is the proper venue for the action because the causes of action have arisen in
27 the County of Alameda where some of the violations of law have occurred, and will continue to
28 occur, due to the ongoing sale of Primal Nutrition’s products. Furthermore, venue is proper in

1 this Court under Code of Civil Procedure section 395.5 and Health & Safety Code section
2 25249.7.

3 IV

4 STATUTORY BACKGROUND

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

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

10 No person in the course of doing business shall knowingly and
11 intentionally expose any individual to a chemical known to the state to
12 cause cancer or reproductive toxicity without first giving clear and
13 reasonable warning to such individual, except as provided in Section
14 25249.10.

15 11. Implementing regulations for Proposition 65 define expose as “to cause to ingest, inhale,
16 contact via body surfaces or otherwise come into contact with a listed chemical.” An individual
17 may come into contact with a listed chemical through water, air, food, consumer products and
18 any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27,
19 § 25102, subd. (i).)

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

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

1 shelf labeling, signs, a system of signs, public advertising identifying the system and toll-free
2 information services, or any other system, that provides clear and reasonable warnings. (Cal.
3 Code Regs., tit. 27, §25603.1, subd. (a)-(d).)

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

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

16 16. Proposition 65 provides that any person “violating or threatening to violate” Proposition
17 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,
18 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
19 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
20 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
21 (Health & Safety Code, § 25249.7, subd. (b)(1).)

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

26 ///

27 ///

28 ///

STATEMENT OF FACTS

18. Primal Nutrition has developed, manufactured, marketed, distributed, and/or sold the SUBJECT PRODUCTS containing lead into the State of California. Consumption of the SUBJECT PRODUCTS according to the directions and/or recommendations provided for said products causes consumers to be exposed to lead at levels exceeding the 0.5 micrograms per day MADL and requiring a warning. Consumers have been ingesting these products for many years, without any knowledge of their exposure to lead, a very dangerous chemical.

19. For many years, Primal Nutrition has knowingly and intentionally exposed numerous persons to lead without providing a Proposition 65 warning. Prior to ERC’s Notice of Violation and this Complaint, Primal Nutrition failed to provide a warning on the labels of the SUBJECT PRODUCTS. Primal Nutrition has at all times relevant hereto been aware that the SUBJECT PRODUCTS contained lead and that persons using these products have been exposed to this chemical. Primal Nutrition has been aware of the presence of lead in the SUBJECT PRODUCTS and has failed to disclose the presence of this chemical to the public, who undoubtedly believe they have been ingesting totally healthy and pure products pursuant to the company’s statements.

20. Both prior and subsequent to ERC’s Notice of Violation, Primal Nutrition failed to provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning that they have been exposed to a chemical known to the State of California to cause cancer, birth defects and other reproductive harm. This failure to warn is ongoing.

FIRST CAUSE OF ACTION
(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and Reasonable Warning under Proposition 65)

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

22. By committing the acts alleged above, Primal Nutrition has, in the course of doing business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to lead, a

1 chemical known to the State of California to cause cancer, birth defects, and other reproductive
2 harm, without first giving clear and reasonable warning to such individuals within the meaning
3 of Health & Safety Code section 25249.6. In doing so, Primal Nutrition has violated Health &
4 Safety Code section 25249.6 and continues to violate the statute with each successive sale of the
5 SUBJECT PRODUCTS.

6 23. Said violations render Primal Nutrition liable for civil penalties, up to \$2,500 per day for
7 each violation, and subject Primal Nutrition to injunction.

8 **SECOND CAUSE OF ACTION**
9 **(Declaratory Relief)**

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

12 25. There exists an actual controversy relating to the legal rights and duties of the Parties,
13 within the meaning of Code of Civil Procedure section 1060, between ERC and Primal
14 Nutrition, concerning whether Primal Nutrition has exposed individuals to a chemical known to
15 the State of California to cause cancer, birth defects, and other reproductive harm without
16 providing clear and reasonable warning.

17 **VI**

18 **PRAYER**

19 WHEREFORE ERC prays for relief as follows:

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


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

26 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
27 Procedure section 1060 declaring that Primal Nutrition has exposed individuals to lead without
28 providing clear and reasonable warning; and

- 1 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
2 Procedure section 1021.5 or the substantial benefit theory;
3 5. For costs of suit herein; and
4 6. For such other relief as the Court may deem just and proper.

5
6 DATED: June 6, 2018

MICHAEL FREUND & ASSOCIATES

7
8 

9 Ryan Hoffman
10 Attorneys for Plaintiff
11 ENVIRONMENTAL RESEARCH CENTER, INC.
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Environmental Research Center

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

March 27, 2018

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:

Primal Nutrition, LLC
Primal Nutrition, Inc.

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) Primal Damage Control Micronutrient SuperFormula - Lead**
- 2) Primal Master Formula - Lead**
- 3) Primal Kitchen Chocolate Coconut Primal Fuel Low-Carb Meal Replacement Shake - Lead**

Exhibit A

4) Primal Kitchen Collagen Fuel Chocolate Coconut Grass-Fed Collagen Peptide Drink Mix – Lead

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the 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 March 27, 2015, 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 ingesting 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 Violators 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 Primal Nutrition, LLC; Primal Nutrition, Inc.; and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Primal Nutrition, LLC and Primal Nutrition, Inc.

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: March 27, 2018

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Primal Nutrition, LLC
1641 S Rose Avenue
Oxnard, CA 93033

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, LLC)
1220 S Street, Suite 150
Sacramento, CA 95811

Current President or CEO
Primal Nutrition, Inc.
1641 S Rose Avenue
Oxnard, CA 93033

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, Inc.)
1220 S Street, Suite 150
Sacramento, CA 95811

Current President or CEO
Primal Nutrition, Inc.
6202 Ramirez Mesa Drive
Malibu, CA 90265

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, LLC)
9 E Lookerman Street, Suite 311
Dover, DE 19901

Current President or CEO
Primal Nutrition, LLC
1679 S Dupont Hwy, Suite 100
Dover, DE 19901

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, LLC)
1010 Dale Street N
St. Paul, MN 55117

On March 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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

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

March 27, 2018

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On March 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney
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CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
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Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
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Prop65@co.tulare.ca.us

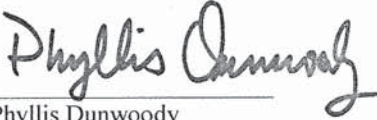
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
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daspecialops@ventura.org

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 27, 2018
Page 6

On March 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 First Class Mail.

Executed on March 27, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in cursive script that reads "Phyllis Dunwoody". The signature is written in black ink and is positioned above a horizontal line.

Phyllis Dunwoody

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 4th Floor
Eureka, CA 95501

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

District Attorney, Inyo County
P.O. Drawer D
Independence, CA 93526

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
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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
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Ukiah, CA 95482

District Attorney, Merced
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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
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419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
303 West Third Street
San Bernadino, CA 92415

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, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
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
463 2nd Street
Yuba City, CA 95991

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

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

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>.

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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

² See Section 25501(a)(4).

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 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.