

From: Environmental Resear Fax: 18662346280

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Page: 5 of 25

12/13/2018 6:07 PM

**FILED BY FAX**

ALAMEDA COUNTY

December 13, 2018

CLERK OF  
THE SUPERIOR COURT  
By Burt Moskaira, Deputy

CASE NUMBER:

**RG18932203**

Michael Freund SBN 99687  
Ryan Hoffman SBN 283297  
Michael Freund & Associates  
1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

Attorneys for Plaintiff Environmental Research Center, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA****COUNTY OF ALAMEDA****ENVIRONMENTAL RESEARCH CENTER,  
INC., a California non-profit corporation****Plaintiff,****vs.****VIVA NATURALS INC.; VIVA LABS INC.;  
and DOES 1-100****Defendants.****CASE NO.****COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF AND  
CIVIL PENALTIES**[Toxic Tort/Environmental (30)  
Proposition 65, Health & Safety Code  
Section 25249.5 et seq.]

Plaintiff Environmental Research Center, Inc. hereby alleges:

**I****INTRODUCTION**

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

1 reproductive toxicity. Cadmium is a chemical known to the State of California to cause cancer,  
2 birth defects, and other reproductive harm. This Complaint seeks injunctive and declaratory  
3 relief and civil penalties to remedy the ongoing failure of Defendants Viva Naturals Inc. and  
4 Viva Labs Inc. (collectively “Viva Naturals”) and Does 1-100 (hereinafter individually referred  
5 to as “Defendant” or collectively as “Defendants”), to warn consumers that they have been  
6 exposed to cadmium from one of Viva Naturals’ nutritional health products as set forth in  
7 paragraph 3 at levels exceeding the applicable Maximum Allowable Dose Level (“MADL”) and  
8 requiring a warning pursuant to Health & Safety Code section 25249.6.

## 9 II

### 10 PARTIES

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

15 3. Defendants Viva Naturals Inc. and Viva Labs Inc. are companies that, either  
16 individually or collectively, develop, manufacture, market, distribute, and/or sell the nutritional  
17 health product that has exposed users to cadmium in the State of California within the relevant  
18 statute of limitations period. This “SUBJECT PRODUCT” (as identified in the Notice of  
19 Violation dated June 19, 2018 attached hereto as **Exhibit A**) is: Viva Naturals Ground Flaxseed  
20 Organic. Viva Naturals Inc. and Viva Labs Inc. are subject to Proposition 65 as each company  
21 employs ten or more persons, and has employed ten or more persons at all times relevant to this  
22 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 Viva Naturals because Viva Naturals 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 PRODUCT in the State  
11 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 June 19, 2018, served on the California Attorney General, other public enforcers, and Viva  
15 Naturals. The Notice of Violation constitutes adequate notice to Viva Naturals because it  
16 provided adequate information to allow Viva Naturals 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 Viva Naturals also included a copy of “The Safe Drinking Water and Toxic  
21 Enforcement Act of 1986 (Proposition 65): A Summary.” Service of the Notice of Violation and  
22 accompanying documents complied with Proposition 65 and its implementing regulations.  
23 Attached hereto as **Exhibit A** is a true and correct copy of this Notice of Violation and  
24 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 Viva Naturals’ products. Furthermore, venue is proper in this

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

2 **IV**

3 **STATUTORY BACKGROUND**

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

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

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

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

19 12. In this case, the exposures are caused by consumer products. Implementing regulations  
20 for Proposition 65 define a consumer product exposure as “an exposure that results from a  
21 person’s acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a  
22 consumer product, including consumption of a food,” and “food” includes “dietary  
23 supplements.” (Cal. Code Regs., tit. 27, § 25600.1, subd. (e) and (g).)

24 13. Proposition 65’s implementing regulations state that “Subarticle 2 [Cal. Code Regs., tit.  
25 27, § 25601 et seq.] provides ‘safe harbor’ content and methods for providing a warning that  
26 have been determined ‘clear and reasonable’.” (Cal. Code Regs., tit. 27, § 25600.) For  
27 consumer product exposures, the Proposition 65 warning requirement may be satisfied by a  
28 product-specific warning provided on a posted sign, shelf tag, or shelf sign at each point of  
display of the product; a product-specific warning provided via any electronic device or process

1 that automatically provides the warning to the purchaser prior to or during the purchase of the  
2 product; or a warning that appears on a product's label. (Cal. Code Regs., tit. 27, §§ 25607.1,  
3 25602, subd. (a) and (b).)

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. Cadmium was officially listed as a chemical known to cause developmental toxicity and  
9 male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were  
10 listed as chemicals known to the State of California to cause cancer on October 1, 1987. (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 cadmium as a chemical known to cause reproductive toxicity is 4.1 micrograms per day. (Cal.  
14 Code Regs., tit. 27, §25805, subd. (b).)

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

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

## 25 V

### 26 **STATEMENT OF FACTS**

27 18. Viva Naturals has developed, manufactured, marketed, distributed, and/or sold the  
28 SUBJECT PRODUCT containing cadmium into the State of California. Consumption of the

1 SUBJECT PRODUCT according to the directions and/or recommendations provided for said  
2 product causes consumers to be exposed to cadmium at levels exceeding the 4.1 micrograms per  
3 day MADL and requiring a warning. Consumers have been ingesting this product for many  
4 years, without any knowledge of their exposure to cadmium, a very dangerous chemical.

5 19. For many years, Viva Naturals has knowingly and intentionally exposed numerous  
6 persons to cadmium without providing a Proposition 65 warning. Prior to ERC's Notice of  
7 Violation and this Complaint, Viva Naturals failed to provide a warning on the labels of the  
8 SUBJECT PRODUCT. Viva Naturals has at all times relevant hereto been aware that the  
9 SUBJECT PRODUCT contained cadmium and that persons using this product have been  
10 exposed to this chemical. Viva Naturals has been aware of the presence of cadmium in the  
11 SUBJECT PRODUCT and has failed to disclose the presence of this chemical to the public,  
12 who undoubtedly believe they have been ingesting a totally healthy and pure product pursuant  
13 to the company's statements.

14 20. Both prior and subsequent to ERC's Notice of Violation, Viva Naturals failed to provide  
15 consumers of the SUBJECT PRODUCT with a clear and reasonable warning that they have  
16 been exposed to a chemical known to the State of California to cause cancer, birth defects and  
17 other reproductive harm. This failure to warn is ongoing.

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

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

23 22. By committing the acts alleged above, Viva Naturals has, in the course of doing  
24 business, knowingly and intentionally exposed users of the SUBJECT PRODUCT to cadmium,  
25 a chemical known to the State of California to cause cancer, birth defects, and other  
26 reproductive harm, without first giving clear and reasonable warning to such individuals within  
27 the meaning of Health & Safety Code section 25249.6. In doing so, Viva Naturals has violated  
28 Health & Safety Code section 25249.6 and continues to violate the statute with each successive

1 sale of the SUBJECT PRODUCT.

2 23. Said violations render Viva Naturals liable for civil penalties, up to \$2,500 per day for  
3 each violation, and subject Viva Naturals to injunction.

4 **SECOND CAUSE OF ACTION**  
5 **(Declaratory Relief)**

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

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

13 **VI**

14 **PRAYER**

15 WHEREFORE ERC prays for relief as follows:

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

18 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,  
19 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive  
20 orders, or other orders as are necessary to prevent Viva Naturals from exposing persons to  
21 cadmium without providing clear and reasonable warning;

22 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
23 Procedure section 1060 declaring that Viva Naturals has exposed individuals to cadmium  
24 without providing clear and reasonable warning; and

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

27 5. For costs of suit herein; and

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

1 DATED: December 13, 2018

MICHAEL FREUND & ASSOCIATES

2  
3  \_\_\_\_\_

4 Michael Freund

5 Ryan Hoffman

6 Attorneys for Plaintiff

7 ENVIRONMENTAL RESEARCH CENTER, INC.



# EXHIBIT A

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## Environmental Research Center

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

June 19, 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:

**Viva Naturals Inc.**  
**Viva Labs Inc.**

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

- 1. Viva Naturals Psyllium Husk Powder Organic - Lead**
- 2. Viva Naturals Royal Quinoa Organic - Lead**
- 3. Viva Naturals Goji Berries Organic- Lead**
- 4. Viva Naturals Ground Flaxseed Organic – Cadmium**

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.

# Exhibit A

June 19, 2018

Page 2

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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 these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least June 19, 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 these known toxic chemicals are 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 chemicals. 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 these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, 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 chemicals, 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 Viva Naturals Inc., Viva Labs Inc., and its Registered Agent for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Viva Naturals Inc. and Viva Labs 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 chemicals that are 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: June 19, 2018

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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 June 19, 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  
Viva Naturals Inc.  
228 Park Avenue S, Suite 2400  
New York, NY 10003

Current President or CEO  
Viva Labs Inc.  
228 Park Avenue S, Suite 2400  
New York, NY 10003

Current President or CEO  
Viva Naturals Inc.  
100 Sheppard Ave East, Suite 700  
North York, ON M2N 6N5  
Canada

Current President or CEO  
Viva Labs Inc.  
100 Sheppard Ave East, Suite 700  
North York, ON M2N 6N5  
Canada

Current President or CEO  
Viva Labs Inc.  
2701 Stanley Gault Parkway  
Louisville, KY 40223

Current President or CEO  
Viva Naturals Inc.  
2701 Stanley Gault Parkway  
Louisville, KY 40223

Current President or CEO  
Viva Labs Inc.  
1200 Worldwide Blvd  
Hebron KY 41048

Current President or CEO  
Viva Naturals Inc.  
1200 Worldwide Blvd  
Hebron KY 41048

Current President or CEO  
Viva Labs Inc.  
1155 Worldwide Blvd  
Hebron KY 41048

Current President or CEO  
Viva Naturals Inc.  
1155 Worldwide Blvd  
Hebron KY 41048

Current President or CEO  
Viva Naturals Inc.  
200 Yorkland Blvd, Suite 720  
North York, ON M2J 5C1  
Canada

Current President or CEO  
Viva Labs Inc.  
200 Yorkland Blvd, Suite 720  
North York, ON M2J 5C1  
Canada

Current President or CEO  
Viva Naturals Inc.  
80 Internationale Blvd  
Glendale Heights, IL 60139

Current President or CEO  
Viva Labs Inc.  
80 Internationale Blvd  
Glendale Heights, IL 60139

Incorp Services Inc.  
(Registered Agent for Viva Labs Inc.)  
2701 Stanley Gault Parkway  
Louisville, KY 40223

Current President or CEO  
Viva Labs Inc.  
616 Corporate Way, Ste 2, #3024  
Valley Cottage, NY 10985

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

June 19, 2018

Page 5

Current President or CEO  
Viva Naturals Inc.  
616 Corporate Way, Ste 2, #3024  
Valley Cottage, NY 10985

On June 19, 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

On June 19, 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](mailto:sgrassini@contracostada.org)

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
[CityAttyCrimProp65@san-diego.gov](mailto:CityAttyCrimProp65@san-diego.gov)

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

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

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

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

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

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
[DAProp65@co.santa-barbara.ca.us](mailto:DAProp65@co.santa-barbara.ca.us)

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

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

June 19, 2018

Page 6

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

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

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

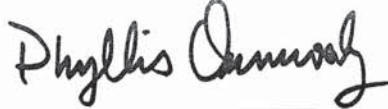
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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 June 19, 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 June 19, 2018, in Fort Oglethorpe, Georgia.



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

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## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto: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.