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11 ENVIRONMENTAL RESEARCH CENTER, INC.

**FILED BY FAX**

ALAMEDA COUNTY

September 20, 2018

CLERK OF  
THE SUPERIOR COURT  
By Alicia Espinoza, Deputy

CASE NUMBER:

**RG18915863**

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF ALAMEDA**

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

17 Plaintiff,

18 v.

19 NUTRAKEY, LLC, a Florida limited liability  
20 company,

21 Defendant.

CASE NO. RG18915863

ASSIGNED FOR ALL PURPOSES TO  
HONORABLE BRAD SELIGMAN,  
DEPARTMENT 23

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

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

22 Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. ("Plaintiff" or "ERC")  
23 brings this action in the interests of the general public and hereby alleges:

24 **INTRODUCTION**

25 1. This action seeks to remedy the continuing failure of Defendant NUTRAKEY, LLC  
26 ("NUTRAKEY" or "DEFENDANT") to warn consumers in California that they are being  
27 exposed to lead and/or cadmium, substances known to the State of California to cause cancer,  
28 birth defects, and other reproductive harm.

2. DEFENDANT manufactures, packages, distributes, markets, and/or sells, in California, certain PRODUCTS containing lead and/or cadmium, including each of the following products ("PRODUCTS"):

- (1) N NutraKey Iso Optima With Hydrolyzed Whey Protein Isolate Chocolate Ice Cream Swirl;
- (2) N NutraKey Health Performance Inc. Hydro Pump Strawberry Lemonade;
- (3) N NutraKey Health Performance Inc. Hydro Pump Cotton Candy;
- (4) N NutraKey Health Performance Inc. Hydro Pump;
- (5) N NutraKey Whey Optima Premium Protein Complex Chocolate Lava Cake;
- (6) N NutraKey Whey Optima Premium Protein Complex Cookies & Cream;
- (7) N NutraKey Raw Plant Protein VPro Vanilla;
- (8) N NutraKey Raw Plant Protein VPro Vegan Mochaccino;
- (9) N NutraKey Health Performance Inc. Spirulina Antioxidant Superfood;
- (10) N NutraKey Health Performance Inc. Antler Test Strength & Muscle Builder;
- (11) N NutraKey Whey Optima Premium Protein Complex Salted Caramel Peanut Butter Cup;
- (12) N NutraKey Whey Optima Premium Protein Complex Vanilla Ice Cream Cookie;
- (13) N NutraKey Health Performance Inc. Garcinia Cambogia with White Kidney Bean Extract Fat Loss & Metabolism;
- (14) N NutraKey Health Performance Inc. Tribulus Pure Terrestris Strength & Performance;
- (15) N Nutrakey Tru PRE Precision Formulated Pre-Workout Rainbow;
- (16) N Nutrakey Health Performance Inc. Garcinia Cambogia Fat Loss & Metabolism;
- (17) N Nutrakey Inc Health Performance Tone Complex Fat Loss & Metabolism;
- (18) N Nutrakey Tru PRE Precision Formulated Pre-Workout Blue Rock Candy;
- (19) N Nutrakey Tru PRE Precision Formulated Pre-Workout Sour Gummy Worms;
- (20) N NutraKey Tru Pre Precision Formulated Pre-Workout Tahitian Fruit Punch;
- (21) N NutraKey Raw Plant Protein VPro Vegan Chocolate;

1 (22) N NutraKey Raw Plant Protein VPro Vegan Vanilla Cookies.

2 3. Lead and lead compounds and/or cadmium (hereinafter, the "LISTED  
3 CHEMICALS") are substances known to the State<sup>1</sup> of California to cause cancer, birth defects,  
4 and other reproductive harm. Proposition 65 requires that consumers must be warned before  
5 they are exposed to the LISTED CHEMICALS.

6 4. The ingestion of the PRODUCTS causes exposures to the LISTED CHEMICALS at  
7 levels requiring a "clear and reasonable warning" under California's Safe Drinking Water and  
8 Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code") Section 25249.5, *et seq.*  
9 (also known and referred to herein as "Proposition 65").

10 5. DEFENDANT has failed to provide the health hazard warnings required by  
11 Proposition 65.

12 6. DEFENDANT's past and continuing manufacturing, packaging, distributing,  
13 marketing, and/or sales of the PRODUCTS, without the required health hazard warnings, causes  
14 or threatens to cause individuals to be involuntarily and unwittingly exposed to levels of the  
15 LISTED CHEMICALS that violate or threaten to violate Proposition 65. As a proximate result  
16 of these actions, DEFENDANT has violated, is violating, and will continue to violate,  
17 Proposition 65.

18 7. Plaintiff seeks injunctive relief enjoining DEFENDANT from the continued  
19 manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS in  
20 California without provision of clear and reasonable warnings regarding the risks of cancer,  
21 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICALS  
22 through the ingestion of the PRODUCTS. Plaintiff seeks an injunctive order compelling  
23 DEFENDANT to bring its business practices into compliance with Proposition 65 by providing  
24 a clear and reasonable warning to each individual who has been, and who in the future may be,  
25 exposed to the LISTED CHEMICALS from the ingestion of the PRODUCTS. Plaintiff also  
26 seeks an order compelling DEFENDANT to identify and locate each individual person who has  
27 purchased the PRODUCTS in the past, and to provide to each such purchaser a clear and  
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<sup>1</sup>All statutory and regulatory references herein are to California law, unless otherwise specified.

1 reasonable warning that ingestion of the PRODUCTS will cause exposures to the LISTED  
2 CHEMICALS.

3 8. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties up to  
4 the maximum civil penalty of \$2,500 per day per exposure authorized by Proposition 65 to  
5 remedy DEFENDANT's failure to provide clear and reasonable warnings regarding exposures  
6 to the LISTED CHEMICALS.

### 7 JURISDICTION AND VENUE

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

12 10. This Court has jurisdiction over DEFENDANT because, based on information and  
13 belief, DEFENDANT is a business having sufficient minimum contacts with California, or  
14 otherwise intentionally availing itself of the California market through the distribution and sale  
15 of the PRODUCTS in the State of California, to render the exercise of jurisdiction over it by the  
16 California courts permissible under traditional notions of fair play and substantial justice.

17 11. Venue in this action is proper in this Court because the DEFENDANT has violated  
18 or threatens to violate California law in the County of Alameda.

### 19 PARTIES

20 12. Plaintiff ERC is a non-profit corporation organized under California's Corporation  
21 Law. ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and  
22 toxic substances, consumer protection, worker safety, and corporate responsibility.

23 13. ERC is a person within the meaning of H&S Code Section 25118 and brings this  
24 enforcement action in the public interest pursuant to H&S Code Section 25249.7(d).

25 14. DEFENDANT NUTRAKEY is a limited liability company organized under the laws  
26 of the State of Florida and is a person doing business within the meaning of H&S Code Section  
27 25249.11. DEFENDANT manufactures, packages, distributes, markets, and/or sells the  
28 PRODUCTS for sale or use in California and in Alameda County.

[illegible]

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

‘knowingly’ refers only to knowledge of the fact that a discharge of, release of, or chemical listed pursuant to H&S Code Section 25249.8(a) of the Act is occurring. That the discharge, release, or exposure is unlawful is required.” 27 California Regulations (“CCR”) § 25102(n).

19. Proposition 65 provides that any “person who violates or threatens to violate” the warning requirements of the statute may be enjoined in a court of competent jurisdiction. H&S Code § 25249.7. The phrase “threaten to violate” is defined to mean creating “a condition in which there is a substantial probability that a violation will occur.” H&S Code § 25249.11(e).

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1 **FACTUAL BACKGROUND**

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

8 22. On October 1, 1992, the State of California officially listed the chemicals lead and  
9 lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject  
10 to the warning requirement one year later and were therefore subject to the "clear and  
11 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. 27 CCR  
12 § 25102, *et seq.*; H&S Code § 25249.6, *et seq.* Due to the carcinogenicity of lead, the no  
13 significant risk level for lead is 15 µg/day. 27 CCR § 25705(b)(1).

14 23. On May 1, 1997, the State of California officially listed the chemical cadmium as a  
15 chemical known to cause reproductive toxicity. Cadmium became subject to the warning  
16 requirement one year later and was therefore subject to the "clear and reasonable" warning  
17 requirements of Proposition 65 beginning on May 1, 1998. 27 CCR § 25000, *et seq.*; H&S  
18 Code § 25249.5, *et seq.* Due to the high toxicity of cadmium, the maximum allowable dose  
19 level for cadmium is 4.10 µg/day (micrograms a day) for reproductive toxicity. 27 CCR §  
20 25805(b).

21 24. On October 1, 1987, the State of California officially listed the chemicals cadmium  
22 and cadmium compounds as chemicals known to cause cancer. Cadmium and cadmium  
23 compounds became subject to the warning requirement one year later and were therefore subject  
24 to the "clear and reasonable" warning requirements of Proposition 65 beginning on October 1,  
25 1988. 27 CCR § 25000, *et seq.*; H&S Code § 25249.6 *et seq.*

26 25. The PRODUCTS have been sold by DEFENDANT for use in California since at least  
27 May 10, 2015.

28 ///

1           26. To test DEFENDANT's PRODUCTS for lead and/or cadmium, Plaintiff hired a well-  
2 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of  
3 DEFENDANT's PRODUCTS show that the PRODUCTS were in violation of the 0.5 µg/day  
4 "safe harbor" daily dose limits for lead and/or 4.10 µg/day "safe harbor" daily dose limits for  
5 cadmium set forth in Proposition 65's regulations. Very significant is the fact that people are  
6 being exposed to lead and/or cadmium through ingestion as opposed to other, less harmful,  
7 methods of exposure such as dermal exposure. Ingestion of lead and/or cadmium produces much  
8 higher exposure levels and health risks than dermal exposure to this chemical.

9           27. At all times relevant to this action, DEFENDANT, therefore, has knowingly and  
10 intentionally exposed the users of the PRODUCTS to the LISTED CHEMICALS without first  
11 giving a clear and reasonable warning to such individuals.

12           28. On May 10, 2018 and July 11, 2018, Plaintiff served NUTRAKEY and each of the  
13 appropriate public enforcement agencies with 60-Day Notices of Proposition 65 violations  
14 documents entitled "Notice of Violations of California Health & Safety Code §25249.5  
15 ("Notices"). A true and correct copy of the Notices are attached hereto as Exhibits A and B  
16 respectively, and each is incorporated herein by reference. The Notices were issued pursuant to,  
17 and in compliance with, the requirements of H&S Code Section 25249.7(d) and the statute's  
18 implementing regulations regarding the notice of the violations to be given to certain public  
19 enforcement agencies and to the violator. The Notices included, *inter alia*, the following  
20 information: the name, address, and telephone number of the noticing individual; the name of  
21 the alleged violator; the statute violated; the approximate time period during which violations  
22 occurred; and descriptions of the violations, including the chemical involved, the route of toxic  
23 exposure, and the specific product or type of product causing the violations, and was issued as  
24 follows:

- 25           a. NUTRAKEY was provided a copy of the Notices by Certified Mail;
- 26           b. NUTRAKEY was provided a copy of a document entitled "The Safe  
27           Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
28           Summary," which is also known as Appendix A to Title 27 of CCR

Section 25903 with each Notice;

- c. The California Attorney General was provided a copy of the Notices via online submission; and
- d. The California Attorney General was provided with Certificates of Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case for this action, and attaching factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code Section 25249.7(h) (2).
- e. The District Attorneys, city attorneys or prosecutors of each jurisdiction within which the PRODUCTS are offered for sale within California were provided with a copy of the Notices via first class mail or electronic submission pursuant to H&S Code Section 25249.7(d)(1).

29. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures without the warnings required by Proposition 65 since at least May 10, 2017 and July 11, 2017, the one-year periods preceding Plaintiff's May 10, 2018 and July 11, 2018 Notices, respectively. These exposures entitle the Court to award civil penalties for the applicable statutory penalty period, which is one year prior to the date of the Notice of Violation. CCP § 340; *Consumer Advocacy Group, Inc.*, 150 Cal.App.4th at 981.

30. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures without the warnings required by Proposition 65 since at least May 10, 2015 and July 11, 2015, the three-year periods preceding the respective May 10, 2018 and July 11, 2018 Notices that is relevant to Plaintiff's prayer for injunctive relief. H&S Code § 25249.7(a); CCP § 338.

31. The imposition of a civil penalty will have a deterrent economic effect in that it is likely to deter future conduct in violation of Proposition 65 by NUTRAKEY and the regulated community as a whole.

32. The PRODUCTS continue to be distributed and sold in California without the



1 requisite warning information.

2 33. At least 60 days have elapsed since Plaintiff sent the Notices to DEFENDANT. The  
3 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
4 cause of action under Proposition 65 against DEFENDANT based on the allegations herein.

5 34. As a proximate result of acts by DEFENDANT, as a person in the course of doing  
6 business within the meaning of H&S Code Section 25249.11, individuals throughout the State  
7 of California, including in the County of Alameda, have been exposed to the LISTED  
8 CHEMICALS without a clear and reasonable warning. The individuals subject to the illegal  
9 exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons  
10 exposed to the PRODUCTS.

11 **FIRST CAUSE OF ACTION**

12 **(Injunctive Relief for Violations of Health and Safety Code Section 25249.5, *et seq.***  
13 **Concerning the PRODUCTS Described in the May 10, 2018 and July 11, 2018 Proposition**  
14 **65 Notices**  
**By Plaintiff Against NUTRAKEY)**

15 35. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully  
16 set forth herein.

17 36. By committing the acts alleged in this Complaint DEFENDANT, at all times  
18 relevant to this action and continuing through the present, has violated H&S Code Section  
19 25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals  
20 who ingest the PRODUCTS set forth in the Notices to the LISTED CHEMICALS, without first  
21 providing a clear and reasonable warning to such individuals pursuant to H&S Code Sections  
22 25249.6 and 25249.11(f).

23 37. By the above-described acts, DEFENDANT has violated H&S Code Section  
24 25249.6 and is therefore subject to an injunction ordering DEFENDANT to stop violating  
25 Proposition 65, to provide warnings to all present and future customers, and to provide warnings  
26 to DEFENDANT's past customers who purchased or used the PRODUCTS without receiving a  
27 clear and reasonable warning.

28 38. An action for injunctive relief under Proposition 65 is specifically authorized by

1 H&S Code Section 25249.7(a).

2 39. Continuing commission by DEFENDANT of the acts alleged above will irreparably  
3 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
4 adequate remedy at law.

5 Wherefore, Plaintiff prays judgment against DEFENDANT, as set forth hereafter.

6 **SECOND CAUSE OF ACTION**

7 (Civil Penalties for Violations of Health and Safety Code Section 25249.5, *et seq.*  
8 Concerning the PRODUCTS Described in the May 10, 2018 and July 11, 2018 Proposition  
65 Notices

9 By Plaintiff Against NUTRAKEY)

10 40. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully  
11 set forth herein.

12 41. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code  
13 Section 25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful  
14 exposure to the LISTED CHEMICALS from the PRODUCTS.

15 Wherefore, Plaintiff prays for judgment against NUTRAKEY, as set forth hereafter.

16 **THE NEED FOR INJUNCTIVE RELIEF**

17 42. Plaintiff realleges and incorporates by this reference all preceding paragraphs as if  
18 set forth below.

19 43. By committing the acts alleged in this Complaint, DEFENDANT has caused  
20 irreparable harm for which there is no plain, speedy, or adequate remedy at law. In the absence  
21 of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury  
22 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED  
23 CHEMICALS through the ingestion of the PRODUCTS.

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff accordingly prays for the following relief:

26 A. A temporary restraining order, preliminary and permanent injunction,  
27 pursuant to H&S Code Section 25249.7(a), enjoining DEFENDANT, its agents,  
28 employees, assigns and all persons acting in concert or participating with

1 DEFENDANT, from distributing or selling the PRODUCTS in California without  
2 first providing a clear and reasonable warning, within the meaning of Proposition 65,  
3 that the ingestion of the PRODUCTS exposes consumers to the LISTED  
4 CHEMICALS;

5 B. An injunctive order, pursuant to H&S Code Section 25249.7(a),  
6 compelling DEFENDANT to identify and locate each individual who has purchased  
7 the PRODUCTS since May 10, 2015 and to provide a warning to each such person  
8 that the use of the PRODUCTS will expose the user to a chemical known to cause  
9 cancer, birth defects, and other reproductive harm;

10 C. An assessment of civil penalties pursuant to H&S Code Section  
11 25249.7(b), against DEFENDANT in the amount of \$2,500 per day for each  
12 violation of Proposition 65;

13 D. An award to Plaintiff of its reasonable attorneys' fees and costs of suit  
14 pursuant to California Code of Civil Procedure Section 1021.5, as Plaintiff shall  
15 specify in further application to the Court; and

16 E. Such other and further relief as may be just and proper.

17  
18 Dated: September 20, 2018

ADAMS BROADWELL JOSEPH & CARDOZO

19  
20  
21 TANYA A. GULESSERIAN  
22 CHRISTINA M. CARO  
23 Attorneys for Plaintiff  
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# EXHIBIT A

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May 10, 2018

VIA CERTIFIED MAIL

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**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

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

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

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

**NutraKey, LLC**

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

1. N NutraKey Iso Optima With Hydrolyzed Whey Protein Isolate Chocolate Ice Cream Swirl - Lead
2. N NutraKey Health Performance Inc. Hydro Pump Strawberry Lemonade - Lead
3. N NutraKey Health Performance Inc. Hydro Pump Cotton Candy - Lead
4. N NutraKey Health Performance Inc. Hydro Pump - Lead
5. N NutraKey Whey Optima Premium Protein Complex Chocolate Lava Cake - Lead
6. N NutraKey Whey Optima Premium Protein Complex Cookies & Cream - Lead
7. N NutraKey Raw Plant Protein VPro Vanilla - Lead
8. N NutraKey Raw Plant Protein VPro Vegan Mochaccino - Lead
9. N NutraKey Health Performance Inc. Spirulina Antioxidant Superfood - Lead
10. N NutraKey Health Performance Inc. Antler Test Strength & Muscle Builder - Lead
11. N NutraKey Whey Optima Premium Protein Complex Salted Caramel Peanut Butter Cup - Lead
12. N NutraKey Whey Optima Premium Protein Complex Vanilla Ice Cream Cookie - Lead

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

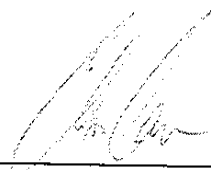
This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since May 10, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

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

Sincerely,



Christina M. Caro

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraKey, LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



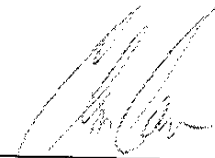
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by NutraKey, LLC**

I, Christina Caro, declare:

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

Dated: May 10, 2018



Christina M. Caro

**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 May 10, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Chris Wagner or Current CEO  
NutraKey, LLC  
975 Bennett Drive  
Longwood, FL 32750

Richard McIntyre, Esquire  
(Registered Agent for NutraKey, LLC)  
1540 International Parkway, Suite 2000  
Lake Mary, FL 32746

On May 10, 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  
Oakland, CA 94612-0550

On May 10, 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** 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)

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

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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 10, 2018  
Page 7

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

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

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gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
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222 E. Weber Avenue, Room 202  
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DAConsumer.Environmental@sjcda.org

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County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney  
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Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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San Jose, CA 95110  
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jbarnes@sonoma-county.org

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Visalia, CA 95370  
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Gregory D. Totten, District Attorney  
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daspecialops@ventura.org

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 10, 2018  
Page 8

On May 10, 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 May 10, 2018, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

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

May 10, 2018

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sierra County 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	

## 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.

# EXHIBIT B

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ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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SOUTH SAN FRANCISCO, CA 94080-7037

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520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

July 11, 2018

**VIA CERTIFIED MAIL**

Chris Wagner or Current CEO  
NutraKey, LLC  
975 Bennett Drive  
Longwood, FL 32750

Richard McIntyre, Esquire  
(Registered Agent for NutraKey, LLC)  
1540 International Parkway, Suite 2000  
Lake Mary, FL 32746

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
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Lassen County  
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Dije Ndreu, Deputy District Attorney  
Monterey County  
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Prop65DA@co.monterey.ca.us

**VIA ELECTRONIC MAIL**

Allison Haley, District Attorney  
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Riverside, CA 92501  
Prop65@rivcoda.org

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Sacramento, CA 95814  
Prop65@sacda.org

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**VIA ELECTRONIC MAIL**

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Stockton, CA 95202  
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Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup>  
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Christopher Dalbey, Deputy District  
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Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

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

**VIA ELECTRONIC MAIL**

Jeffrey S. Rosell, District Attorney  
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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  
Ventura, CA 93009  
daspecialops@ventura.org

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

**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

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

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

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

**NutraKey, LLC**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **N NutraKey Health Performance Inc. Garcinia Cambogia with White Kidney Bean Extract Fat Loss & Metabolism - Lead**
2. **N NutraKey Health Performance Inc. Tribulus Pure Terrestris Strength & Performance - Lead**
3. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Rainbow - Lead**
4. **N Nutrakey Health Performance Inc. Garcinia Cambogia Fat Loss & Metabolism - Lead**
5. **N Nutrakey Inc Health Performance Tone Complex Fat Loss & Metabolism - Lead**
6. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Blue Rock Candy - Lead**
7. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Sour Gummy Worms - Lead**
8. **N NutraKey Tru Pre Precision Formulated Pre-Workout Tahitian Fruit Punch - Lead**
9. **N NutraKey Raw Plant Protein VPro Vegan Chocolate – Lead, Cadmium**
10. **N NutraKey Raw Plant Protein VPro Vegan Vanilla Cookies - 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.

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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A

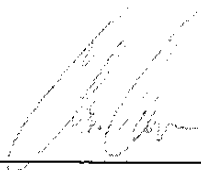
summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead and cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since July 11, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

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

Sincerely,



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Christina M. Caro

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraKey, LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

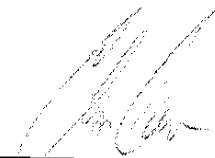
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by NutraKey, LLC**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 11, 2018



Christina M. Caro



**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 July 11, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Chris Wagner or Current CEO  
NutraKey, LLC  
975 Bennett Drive  
Longwood, FL 32750

Richard McIntyre, Esquire  
(Registered Agent for NutraKey, LLC)  
1540 International Parkway, Suite 2000  
Lake Mary, FL 32746

On July 11, 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  
Oakland, CA 94612-0550

On July 11, 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** 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)

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

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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
July 11, 2018  
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Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

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

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

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

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

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

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
July 11, 2018  
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On July 11, 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 July 11, 2018, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

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

July 11, 2018

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sierra County 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	

## 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?*

***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

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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>.

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 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.

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.



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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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