

From: Environmental Research Fax: 18662346280

To: 5102671546@rcfax.com

Fax: (510) 267-1546

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Richard M. Franco (CBN 170970)
 Law Office of Richard M. Franco
 6500 Estates Drive, Oakland CA 94611

TELEPHONE NO.: 510.684.1022 FAX NO. (Optional):
 ATTORNEY FOR (Name): Environmental Research Center, Inc.

FOR COURT USE ONLY

FILED BY FAX
 ALAMEDA COUNTY

May 26, 2020

CLERK OF
 THE SUPERIOR COURT
 By Cheryl Clark, Deputy

CASE NUMBER:
RG20062150

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

STREET ADDRESS: 1225 Fallon Street
 MAILING ADDRESS: 1225 Fallon Street
 CITY AND ZIP CODE: Oakland 94612
 BRANCH NAME: Rene C. Davidson Courthouse

CASE NAME:
 Environmental Research Center, Inc. v. Fusion Bodybuilding Inc.

CIVIL CASE COVER SHEET		Complex Case Designation	
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000)	<input type="checkbox"/> Counter	<input type="checkbox"/> Joinder
		Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

CASE NUMBER:
 JUDGE:
 DEPT.:

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

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

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (34) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 2

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 12 2020

Richard M. Franco

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)



NOTICE

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

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Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: **Environmental Research Center, Inc. v. Fusion Bodybuilding Inc.** Case Number: _____

CIVIL CASE COVER SHEET ADDENDUM

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ALAMEDA COUNTY

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

May 26, 2020

Oakland, Rene C. Davidson Alameda County Courthouse (446) Hayward Hall of Justice (440) THE SUPERIOR COURT
 Pleasanton, Gale Schemone Hall of Justice (448) By Cheryl Clark, Deputy

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	CASE NUMBER
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no	RG20062150
Other PI /PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	<input type="checkbox"/> 75 Asbestos (D) <input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G) <input type="checkbox"/> 97 Medical malpractice (G) <input type="checkbox"/> 33 Other PI/PD/WD tort (G)	
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G) <input type="checkbox"/> 80 Civil rights (G) <input type="checkbox"/> 84 Defamation (G) <input type="checkbox"/> 24 Fraud (G) <input type="checkbox"/> 87 Intellectual property (G) <input type="checkbox"/> 59 Professional negligence - non-medical (G) <input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36) Other employment (15)	<input type="checkbox"/> 38 Wrongful termination (G) <input type="checkbox"/> 85 Other employment (G) <input type="checkbox"/> 53 Labor comm award confirmation <input type="checkbox"/> 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06) Collections (09) Insurance coverage (18) Other contract (37)	<input type="checkbox"/> 04 Breach contract / Wrnty (G) <input type="checkbox"/> 81 Collections (G) <input type="checkbox"/> 86 Ins. coverage - non-complex (G) <input type="checkbox"/> 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G) <input type="checkbox"/> 17 Wrongful eviction (G) <input type="checkbox"/> 36 Other real property (G)	
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	<input type="checkbox"/> 94 Unlawful Detainer - commercial <input type="checkbox"/> 47 Unlawful Detainer - residential <input type="checkbox"/> 21 Unlawful detainer - drugs	Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	<input type="checkbox"/> 41 Asset forfeiture <input type="checkbox"/> 62 Pet. re: arbitration award <input type="checkbox"/> 49 Writ of mandate Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 64 Other judicial review	
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	<input type="checkbox"/> 77 Antitrust / Trade regulation <input type="checkbox"/> 82 Construction defect <input type="checkbox"/> 78 Claims involving mass tort <input type="checkbox"/> 91 Securities litigation <input type="checkbox"/> 93 Toxic tort / Environmental <input type="checkbox"/> 95 Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment <input type="checkbox"/> 08 Confession of judgment	
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	<input type="checkbox"/> 90 RICO (G) <input type="checkbox"/> 88 Partnership / Corp. governance (G) <input checked="" type="checkbox"/> 68 All other complaints (G)	
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name <input type="checkbox"/> 69 Other petition	

SUM-100

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

FUSION BODYBUILDING INC., a Canadian corporation, FUSION BODY BUILDING INC., a Canadian corporation, [Additional Parties Attachment Form is Attached]

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

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

FILED BY FAX

ALAMEDA COUNTY

May 26, 2020

CLERK OF THE SUPERIOR COURT

By Cheryl Clark, Deputy

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is: (El nombre y dirección de la corte es): Alameda County Superior Court 1225 Fallon Street Oakland CA 94612

CASE NUMBER: (Número del Caso): RG20062150

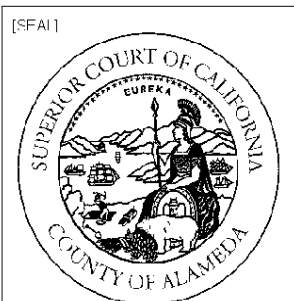
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Richard M. Franco, 6500 Estates Drive, Oakland CA 94611 510.684.1022

DATE: (Fecha) May 26, 2020

Clerk (Señal) Cheryl Clark, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form F) (Para prueba de entrega de esta citación use el formulario Proof of Service of S



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
2. as the person sued under the fictitious name of (specify).
3. on behalf of (specify):
under: CCP 416.10 (corporation), CCP 416.20 (defunct corporation), CCP 416.40 (association or partnership), other (specify):
4. by personal delivery on (date)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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ALAMEDA COUNTY

May 26, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:

RG20062150

1 RICHARD M. FRANCO (CBN 170970)
 2 LAW OFFICE OF RICHARD M. FRANCO
 3 6500 Estates Drive
 4 Oakland, CA 94611
 5 Ph: 510-684-1022
 6 Email: rick@rfrancolaw.com
 7
 8 Attorney for Plaintiff
 9 ENVIRONMENTAL RESEARCH CENTER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

12 Plaintiff,

13 vs.

14 FUSION BODYBUILDING INC., a Canadian
 15 corporation, FUSION BODY BUILDING
 16 INC., a Canadian corporation, FUSION INC.,
 17 a Canadian corporation, FUSION
 18 NUTRITION INCORPORATED, a Canadian
 19 corporation, and SIRE BIOSCIENCE INC., a
 20 Canadian corporation,

21 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

20 Plaintiff Environmental Research Center, Inc. (“PLAINTIFF” or “ERC”) brings this
21 action in the interests of the general public and, on information and belief, hereby alleges:

INTRODUCTION

23 1. This action seeks to remedy the continuing failure of Defendants FUSION
 24 BODYBUILDING INC., FUSION BODY BUILDING INC., FUSION INC., FUSION
 25 NUTRITION INCORPORATED, and SIRE BIOSCIENCE INC. (“DEFENDANTS”) to warn
 26 consumers in California that they are being exposed to lead, a substance known to the State of

1 California to cause cancer, birth defects, and other reproductive harm. DEFENDANTS
2 manufacture, package, distribute, market, and/or sell in California certain products containing
3 lead (collectively, the “PRODUCTS”):

- 4
- 5 • **Fusion Muscle Performance Purple•K Reps Explosive Strength Gains & Pump Pre-Workout Formula SweetTarts (lead)**
- 6 • **Fusion Muscle Performance Purple•K Reps Explosive Strength Gains & Pump Pre-Workout Formula RocketPop (lead)**
- 7 • **Fusion Muscle Performance Mindset Nootropic Focus & Clarity Smart Fat Loss**
- 8 • **Fusion Muscle Performance Game Changer Pro-Performance Sports Mix Cherry Blaster (lead)**
- 9 • **Fusion Muscle Performance Game Changer Pro-Performance Sports Mix Fuzzy Peach (lead)**
- 10

11 2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the
12 State¹ of California to cause cancer, birth defects, and other reproductive harm.

13 3. The ingestion of the PRODUCTS causes exposure to the LISTED CHEMICAL
14 at levels requiring a “clear and reasonable warning” under California's Safe Drinking Water
15 and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et seq.*
16 (also known as “Proposition 65”). DEFENDANTS have failed to provide the health hazard
17 warnings required by Proposition 65.

18 4. DEFENDANTS’ past and continued manufacturing, packaging, distributing,
19 marketing, and/or sales of the PRODUCTS without the required health hazard warnings,
20 causes or threatens to cause individuals to be involuntarily and unwittingly exposed to levels of
21 the LISTED CHEMICAL that violate or threaten to violate Proposition 65.

22 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANTS from the
23 continued manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS
24 in California without provision of clear and reasonable warnings regarding the risks of cancer,
25

26 _____
¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL
2 through the ingestion of the PRODUCTS. PLAINTIFF seeks an injunction compelling
3 DEFENDANTS to bring their business practices into compliance with Proposition 65 by
4 providing a clear and reasonable warning to each individual who has been and who in the
5 future may be exposed to the LISTED CHEMICAL from the ingestion of the PRODUCTS.
6 PLAINTIFF also seeks an order compelling DEFENDANTS to identify and locate each
7 individual person who in the past has purchased the PRODUCTS, and to provide to each such
8 purchaser a clear and reasonable warning that ingestion of the PRODUCTS will cause
9 exposures to the LISTED CHEMICAL.

10 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil
11 penalties up to the maximum civil penalty of \$2,500 per day per exposure as authorized by
12 Proposition 65 to remedy DEFENDANTS' failure to provide clear and reasonable warnings
13 regarding exposures to the LISTED CHEMICAL.

14 **JURISDICTION AND VENUE**

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

19 8. This Court has jurisdiction over DEFENDANTS because, based on information
20 and belief, DEFENDANTS intentionally avail themselves of the California market through the
21 marketing, distribution and sale of the PRODUCTS in the State of California, which renders
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice.

24 9. Venue in this action is proper in the Alameda Superior Court because
25 DEFENDANTS have violated or threaten to violate California law in the County of Alameda
26 by marketing, distributing and/or selling the PRODUCTS in Alameda County.

1 10. On February 11, 2020, PLAINTIFF sent a 60-Day Notice of Proposition 65
2 Violation to the requisite public enforcement agencies and to DEFENDANTS. The Notice was
3 issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and
4 the statute's implementing regulations regarding the notice of the violations to be given to
5 certain public enforcement agencies and to the violator. The Notice included, *inter alia*, the
6 following information: the name, address, and telephone number of the noticing individuals;
7 the name of the alleged violator; the statute violated; the approximate time period during which
8 violations occurred; and descriptions of the violations, including the chemicals involved, the
9 route of toxic exposure, and the specific product or type of product causing the violations, and
10 was issued as follows:

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

26 11. At least 60 days have elapsed since PLAINTIFF sent the Notice to

1 DEFENDANTS. The appropriate public enforcement agencies have failed to commence and
2 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against
3 DEFENDANTS based on the allegations herein.

4 **PARTIES**

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

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

11 14. DEFENDANT FUSION BODYBUILDING INC. is a Canadian business
12 corporation and is a person doing business within the meaning of H&S Code §25249.11.

13 15. DEFENDANT FUSION BODY BUILDING INC. is a Canadian business
14 corporation and is a person doing business within the meaning of H&S Code §25249.11.

15 16. DEFENDANT FUSION INC. is a Canadian business corporation and is a
16 person doing business within the meaning of H&S Code §25249.11.

17 17. DEFENDANT FUSION NUTRITION INCORPORATED is a Canadian
18 business corporation and is a person doing business within the meaning of H&S Code
19 §25249.11.

20 18. DEFENDANT SIRE BIOSCIENCE INC. is a Canadian business
21 corporation and is a person doing business within the meaning of H&S Code §25249.11.

22 19. DEFENDANTS have manufactured, packaged, distributed, marketed, and/or
23 sold the PRODUCTS for sale or use in California and the County of Alameda. ERC is
24 informed and believes, and thereupon alleges, that DEFENDANTS continue to manufacture,
25 package, distribute, market and/or sell the PRODUCTS for sale or use in California and in
26

1 Alameda County. DEFENDANTS know and intend that the PRODUCTS are distributed,
2 marketed and sold to consumers in California.

3 **STATUTORY BACKGROUND**

4 20. The People of the State of California have declared in Proposition 65 their right
5 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
6 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

7 21. To effect this goal, Proposition 65 requires that individuals be provided with a
8 "clear and reasonable warning" before being exposed to substances listed by the State of
9 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
10 part:

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

14 22. "'Knowingly' refers only to knowledge of the fact that a discharge of, release of,
15 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
16 knowledge that the discharge, release or exposure is unlawful is required." (27 California Code
17 of Regulations ("CCR") § 25102(n).)

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

23 **FACTUAL BACKGROUND**

24 24. On February 27, 1987, the State of California officially listed the chemical lead
25 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
26 requirement one year later and was therefore subject to the "clear and reasonable" warning

1 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;
2 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose
3 level (MADL) for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR
4 § 25805(b).)

5 25. On October 1, 1992, the State of California officially listed the chemicals lead
6 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
7 subject to the warning requirement one year later and were therefore subject to the “clear and
8 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §
9 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
10 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

11 26. To test DEFENDANTS’ PRODUCTS for lead, PLAINTIFF hired a well-
12 respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF
13 of DEFENDANTS’ PRODUCTS show that the PRODUCTS tested were in violation of the 0.5
14 µg/day “safe harbor” daily exposure limit for lead set forth in Proposition 65’s regulations. It
15 is significant that people are being exposed to lead through ingestion as opposed to other
16 methods of exposure such as dermal exposure. Ingestion of lead produces much higher
17 exposure levels and health risks than dermal exposure to these chemicals.

18 27. At all times relevant to this action, DEFENDANTS, therefore, have knowingly
19 and intentionally exposed the consumers of the PRODUCTS to the LISTED CHEMICAL
20 without first giving a clear and reasonable warning to such individuals.

21 28. DEFENDANTS have allegedly sold the PRODUCTS for use in California
22 since at least February 11, 2017. The PRODUCTS continue to be distributed and sold in
23 California without the requisite warning information.

24 29. On February 11, 2020, ERC served DEFENDANTS and each of the appropriate
25 public enforcement agencies with a Proposition 65 Notice, a document entitled “Notice of
26 Violations of California Health & Safety Code Section 25249.5” that provided DEFENDANTS

1 and the public enforcement agencies with notice that DEFENDANTS were in violation of
2 Proposition 65 for failing to warn purchasers and individuals using the PRODUCTS that the
3 ingestion of the PRODUCTS exposes them to lead, a chemical known to the State of California
4 to cause cancer and/or reproductive toxicity (a true and correct copy of the 60-Day Notice is
5 attached hereto as **Exhibit A** and incorporated by reference).

6 30. As a proximate result of acts by DEFENDANTS, as persons in the course of
7 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout
8 the State of California, including in the County of Alameda, have been exposed to the LISTED
9 CHEMICAL without a clear and reasonable warning. The individuals subject to the illegal
10 exposures include normal and foreseeable consumers of the PRODUCTS, as well as all other
11 persons exposed to the PRODUCTS.

12 **FIRST CAUSE OF ACTION**
13 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
14 **the PRODUCTS described in the February 11, 2020, Prop. 65 Notice)**
15 **Against DEFENDANTS**

16 31. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 30,
17 inclusive, as if specifically set forth herein.

18 32. By committing the acts alleged in this Complaint, DEFENDANTS, at all times
19 relevant to this action, and continuing through the present, have violated or threaten to violate
20 H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
21 individuals who ingest the PRODUCTS set forth in the Notice to the LISTED CHEMICAL,
22 without first providing a clear and reasonable warning to such individuals pursuant to H&S
23 Code §§ 25249.6 and 25249.11(f).

24 33. By the above-described acts, DEFENDANTS have violated or threaten to
25 violate H&S Code § 25249.6 and are therefore subject to an injunction ordering
26 DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and future
customers, and to provide warnings to DEFENDANTS' past customers who purchased or

1 ingested the PRODUCTS without receiving a clear and reasonable warning.

2 34. An action for injunctive relief under Proposition 65 is specifically authorized by
3 Health & Safety Code §25249.7(a).

4 35. Continuing commission by DEFENDANTS of the acts alleged above will
5 irreparably harm the citizens of the State of California, for which harm they have no plain,
6 speedy, or adequate remedy at law.

7 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth
8 hereafter.

9 **SECOND CAUSE OF ACTION**
10 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
11 **PRODUCTS described in PLAINTIFF’s Notice)**
12 **Against DEFENDANTS**

13 34. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 35,
14 inclusive, as if specifically set forth herein.

15 35. By committing the acts alleged in this Complaint, DEFENDANTS at all times
16 relevant to this action, and continuing through the present, have violated H&S Code §25249.6
17 by, in the course of doing business, knowingly and intentionally exposing individuals who
18 ingest the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first
19 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
20 25249.6 and 25249.11(f).

21 36. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
22 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to
23 the LISTED CHEMICAL from the PRODUCTS.

24 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth
25 hereafter.

26 **THE NEED FOR INJUNCTIVE RELIEF**

37. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through

1 36, as if set forth below.

2 38. By committing the acts alleged in this Complaint, DEFENDANTS have caused
3 or threaten to cause irreparable harm for which there is no plain, speedy or adequate remedy at
4 law. In the absence of equitable relief, DEFENDANTS will continue to create a substantial
5 risk of irreparable injury by continuing to cause or threatening to cause consumers to be
6 involuntarily and unwittingly exposed to the LISTED CHEMICALS through the ingestion of
7 the PRODUCTS.

8
9 **PRAYER FOR RELIEF**

10 Wherefore, PLAINTIFF accordingly prays for the following relief:

11 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
12 enjoining DEFENDANTS, their agents, employees, assigns, and all persons acting in concert
13 or participating with DEFENDANTS, from distributing or selling the PRODUCTS in
14 California without first providing a clear and reasonable warning, within the meaning of
15 Proposition 65, that the consumers of the PRODUCTS are exposed to the LISTED
16 CHEMICAL;

17 B. an injunction, pursuant to H&S Code §25249.7(b), compelling DEFENDANTS
18 to identify and locate each individual who has purchased the PRODUCTS since February 11,
19 2020, and to provide a warning to such person that ingestion of the PRODUCTS will expose
20 the consumer to chemicals known to cause birth defects and other reproductive harm;

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

23 D. an award to PLAINTIFF of its reasonable attorney's fees and costs of suit
24 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further
25 application to the Court; and
26

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

DATED: May 12, 2020

LAW OFFICE OF RICHARD M. FRANCO



Richard M. Franco
Attorney for Plaintiff
Environmental Research Center, Inc.

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EXHIBIT A

LAW OFFICE OF RICHARD M. FRANCO

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Current President or CEO
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VIA ONLINE SUBMISSION

VIA FIRST CLASS MAIL

Office of the California Attorney General

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 names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Fusion BodyBuilding Inc.
Fusion Body Building Inc.
Fusion Inc.
Fusion Nutrition Incorporated
Sire Bioscience Inc.

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

1. Fusion Muscle Performance Purple•K Reps Explosive Strength Gains & Pump Pre-Workout Formula SweetTarts - Lead
2. Fusion Muscle Performance Purple•K Reps Explosive Strength Gains & Pump Pre-Workout Formula RocketPop - Lead
3. Fusion Muscle Performance Mindset Nootropic Focus & Clarity Smart Fat Loss - Lead
4. Fusion Muscle Performance Game Changer Pro-Performance Sports Mix Cherry Blaster - Lead
5. Fusion Muscle Performance Game Changer Pro-Performance Sports Mix Fuzzy Peach - 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.

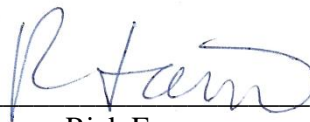
This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue 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 Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues 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 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 Violators violated Proposition 65 because they 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 February 11, 2017, 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 Violators agree 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,



Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fusion BodyBuilding Inc., Fusion Body Building Inc., Fusion Inc., Fusion Nutrition Incorporated and Sire Bioscience Inc.)

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 Fusion BodyBuilding Inc., Fusion Body Building Inc., Fusion Inc., Fusion Nutrition Incorporated and Sire Bioscience Inc.

I, Rick Franco, declare:

1. This Certificate of Merit accompanies the attached sixty-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 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 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: February 11, 2020



Rick Franco

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 February 11, 2020, 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:

Current President or CEO
Fusion Bodybuilding Inc.
45 Dawson Rd, Ste 1
Guelph, ON N1H 1B1
Canada

Current President or CEO
Fusion Nutrition Incorporated
45 Dawson Rd, Ste 1
Guelph, ON N1H 1B1
Canada

Current President or CEO
Fusion Body Building Inc.
45 Dawson Rd, Ste 1
Guelph, ON N1H 1B1
Canada

Current President or CEO
Sire Bioscience Inc.
213 Sterling Rd, Ste 206
Toronto, ON M6R 2B2
Canada

Current President or CEO
Fusion Inc.
45 Dawson Rd, Ste 1
Guelph, ON N1H 1B1
Canada

On February 11, 2020, 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 February 11, 2020, 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:

Nancy O’Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
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Barbara Yook, District Attorney
Calaveras County
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

February 11, 2020

Page 7

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

February 11, 2020

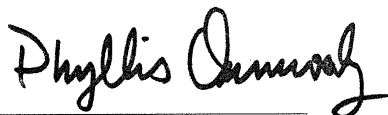
Page 8

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On February 11, 2020, 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 February 11, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

February 11, 2020

Page 9

Service List

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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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

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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.