

From: Environmental Research Center, Inc. Fax: 18662346280 To: 5102671546@rcfax.com Fax: (510) 267-1546

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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 June 03, 2020 CLERK OF THE SUPERIOR COURT By Gina Fu, Deputy CASE NUMBER: RG20063397

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse

CASE NAME: Environmental Research Center, Inc. v. Let's Talk Health, Inc.

CIVIL CASE COVER SHEET Complex Case Designation [X] Unlimited (Amount demanded exceeds \$25,000) [] Limited (Amount demanded is \$25,000) [] Counter [] Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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

1. Check one box below for the case type that best describes this case: Auto Tort, Contract, Provisionally Complex Civil Litigation, Other P/PI/D/W/D, Real Property, Unlawful Detainer, Judicial Review, Non-P/PI/D/W/D, Employment, Miscellaneous Civil Complaint, Miscellaneous Civil Petition.

2. This case [] is [X] 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. [] Large number of separately represented parties b. [] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. [] Substantial amount of documentary evidence d. [] Large number of witnesses e. [] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. [] Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. [X] monetary b. [X] nonmonetary, declaratory or injunctive relief c. [] punitive 4. Number of causes of action (specify): 2 5. This case [] is [X] is not a class action suit. 6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.) Date: June 2, 2020 Richard M. Franco

[Signature] (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. Page 1 of 2

SUM-100

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LET'S TALK HEALTH, INC., a California corporation,

FILED BY FAX

ALAMEDA COUNTY

June 03, 2020

CLERK OF THE SUPERIOR COURT

By Gina Fu, Deputy

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

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

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): RG20063397

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) June 03, 2020

Cle (St

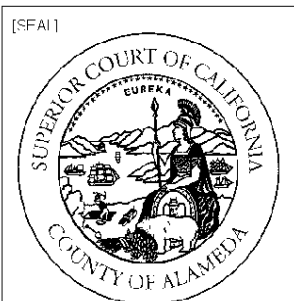
[Signature]

digital

, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 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 416.60 (minor)
[] CCP 416.20 (defunct corporation) [] CCP 416.70 (conservatee)
[] CCP 416.40 (association or partnership) [] CCP 416.90 (authorized person)
[] 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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From: Environmental Research Fax: 18662346280

To: 5102671546@rcfax.com

Fax: (510) 267-1546

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FILED BY FAX
ALAMEDA COUNTY

June 03, 2020

CLERK OF
THE SUPERIOR COURT
By Gina Fu, Deputy

CASE NUMBER:

RG20063397

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4
Attorney for Plaintiff
5 ENVIRONMENTAL RESEARCH CENTER, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

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

11 Plaintiff,

12 vs.

13 LET'S TALK HEALTH, INC., a California
14 corporation,

15 Defendant.
16
17

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

18
19 Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this
20 action in the interest of the general public and, on information and belief, hereby alleges:

21 **INTRODUCTION**

22 1. This action seeks to remedy the continuing failure of Defendant Let's Talk
23 Health, Inc. ("LET'S TALK HEALTH" or "DEFENDANT") to warn consumers in California
24 that they are being exposed to lead, a substance known to the State of California to cause
25 cancer, birth defects, and other reproductive harm. DEFENDANT manufactures, packages,
26 distributes, markets, and/or sells in California certain products containing lead (collectively, the

1 “PRODUCTS”):

- 2 • **Let’s Talk Health Nutritional Supplements Varigone (lead)**
- 3 • **Let’s Talk Health Nutritional Supplements Man Alive (lead)**
- 4 • **Let’s Talk Health Nutritional Supplements Moringa (lead)**
- 5 • **Let’s Talk Health Nutritional Supplements Liver Rejuv (lead)**
- 6 • **Let’s Talk Health Menopause (lead)**
- 7 • **Let’s Talk Health Stress Eze Plus Mood Enhancer (lead)**
- 8 • **Let’s Talk Health Diatrol Plus (lead)**

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

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

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

20 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANT from the continued
21 manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS in
22 California without provision of clear and reasonable warnings regarding the risks of cancer,
23 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL
24 through the ingestion of the PRODUCTS. PLAINTIFF seeks an injunction compelling
25

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

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

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

12 **JURISDICTION AND VENUE**

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

17 8. This Court has jurisdiction over DEFENDANT because, based on information
18 and belief, DEFENDANT is a California corporation and manufactures, distributes and/or sells
19 the PRODUCTS in the State of California, such that the exercise of jurisdiction over it by the
20 California courts is consistent with traditional notions of fair play and substantial justice.

21 9. Venue in this action is proper in the Alameda Superior Court because the
22 DEFENDANT has violated or threatens to violate California law in the County of Alameda.

23 10. On March 19, 2020, PLAINTIFF sent a 60-Day Notice of Proposition 65
24 Violation to the requisite public enforcement agencies and to LET'S TALK HEALTH. The
25 Notice was issued pursuant to, and in compliance with, the requirements of H&S Code
26 §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to

1 be given to certain public enforcement agencies and to the violators. The Notice included,
2 *inter alia*, the following information: the name, address, and telephone number of the noticing
3 individuals; the name of the alleged violator; the statute violated; the approximate time period
4 during which violations occurred; and descriptions of the violations, including the chemical
5 involved, the route of exposure, and the specific product or type of product causing the
6 violations, and was issued as follows:

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

22 11. At least 60 days have elapsed since PLAINTIFF sent the Notice to
23 DEFENDANT. The appropriate public enforcement agencies have failed to commence and
24 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against
25 DEFENDANT based on the allegations herein.

26 ///

1 **PARTIES**

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

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

8 14. DEFENDANT LET'S TALK HEALTH, INC. is a corporation organized
9 under the laws of the State of California and is a person doing business within the
10 meaning of H&S Code §25249.11.

11 15. DEFENDANT has manufactured, packaged, distributed, marketed, and/or sold
12 the PRODUCTS for sale or use in California and the County of Alameda. ERC is informed and
13 believes, and thereupon alleges, that DEFENDANT continues to manufacture, package,
14 distribute, market and/or sell the PRODUCTS for sale or use in California and in Alameda
15 County. DEFENDANT knows and intends that the PRODUCTS are distributed, marketed and
16 sold to consumers in California.

17 **STATUTORY BACKGROUND**

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

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

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

individual....

1
2 18. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of,
3 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
4 knowledge that the discharge, release or exposure is unlawful is required.” (27 California Code
5 of Regulations (“CCR”) § 25102(n).)

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

11 **FACTUAL BACKGROUND**

12 20. On February 27, 1987, the State of California officially listed the chemical lead
13 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
14 requirement one year later and was therefore subject to the “clear and reasonable” warning
15 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;
16 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose
17 level (MADL) for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR
18 § 25805(b).)

19 21. On October 1, 1992, the State of California officially listed the chemicals lead
20 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
21 subject to the warning requirement one year later and were therefore subject to the “clear and
22 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §
23 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
24 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

25 22. To test DEFENDANT’s PRODUCTS for lead, PLAINTIFF hired a well-
26 respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF

1 of DEFENDANT's PRODUCTS show that the PRODUCTS tested were in violation of the 0.5
2 µg/day "safe harbor" daily dose limit for lead set forth in Proposition 65's regulations.
3 Ingestion of lead produces much higher exposure levels and health risks than dermal exposure
4 to this chemical.

5 23. At all times relevant to this action, DEFENDANT, therefore, has knowingly and
6 intentionally exposed the consumers of the PRODUCTS to the LISTED CHEMICAL without
7 first giving a clear and reasonable warning to such individuals.

8 24. DEFENDANT has sold the PRODUCTS for use in California since at least
9 March 19, 2017. The PRODUCTS continue to be distributed and sold in California
10 without the requisite warning information.

11 25. On March 19, 2020, ERC served DEFENDANT and each of the appropriate
12 public enforcement agencies with a Proposition 65 Notice, a document entitled "Notice of
13 Violations of California Health & Safety Code Section 25249.5" that provided DEFENDANT
14 and the public enforcement agencies with notice that DEFENDANT is in violation of
15 Proposition 65 for failing to warn purchasers and individuals using the PRODUCTS that the
16 ingestion of the PRODUCTS exposes them to lead, a chemical known to the State of California
17 to cause cancer and/or reproductive toxicity (a true and correct copy of the 60-Day Notice is
18 attached hereto as **Exhibit A** and incorporated by reference).

19 26. As a proximate result of acts by DEFENDANT, as a person in the course of
20 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout
21 the State of California, including in the County of Alameda, have been exposed to the LISTED
22 CHEMICAL without first receiving a clear and reasonable warning. The individuals subject to
23 the illegal exposures include normal and foreseeable consumers of the PRODUCTS, as well as
24 all other persons exposed to the PRODUCTS.

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26 ///

1 **FIRST CAUSE OF ACTION**

2 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
3 **the PRODUCTS described in the March 19, 2020, Prop. 65 Notice)**
4 **Against DEFENDANT**

5 27. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 26,
6 inclusive, as if specifically set forth herein.

7 28. By committing the acts alleged in this Complaint, DEFENDANT, at all times
8 relevant to this action, and continuing through the present, has violated or threatens to violate
9 H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
10 individuals who ingest the PRODUCTS set forth in the Notice to the LISTED CHEMICAL,
11 without first providing a clear and reasonable warning to such individuals pursuant to H&S
12 Code §§ 25249.6 and 25249.11(f).

13 29. By the above-described acts, DEFENDANT has violated or threatens to violate
14 H&S Code § 25249.6 and is therefore subject to an injunction ordering DEFENDANT to stop
15 violating Proposition 65, to provide warnings to all present and future customers, and to
16 provide warnings to DEFENDANT's past customers who purchased or ingested the
17 PRODUCTS without receiving a clear and reasonable warning.

18 30. An action for injunctive relief under Proposition 65 is specifically authorized by
19 Health & Safety Code §25249.7(a).

20 31. Continuing commission by DEFENDANT of the acts alleged above will
21 irreparably harm the citizens of the State of California, for which harm they have no plain,
22 speedy, or adequate remedy at law.

23 Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth
24 hereafter.

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1 **SECOND CAUSE OF ACTION**
2 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**
3 **PRODUCTS described in PLAINTIFF’s Notice)**
4 **Against DEFENDANT**

5 32. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 31,
6 inclusive, as if specifically set forth herein.

7 33. By committing the acts alleged in this Complaint, DEFENDANT at all times
8 relevant to this action, and continuing through the present, has violated H&S Code §25249.6
9 by, in the course of doing business, knowingly and intentionally exposing individuals who
10 ingest the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first
11 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
12 25249.6 and 25249.11(f).

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

16 Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth
17 hereafter.

18 **THE NEED FOR INJUNCTIVE RELIEF**

19 35. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through
20 34, as if set forth below.

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

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1 **PRAYER FOR RELIEF**

2 Wherefore, PLAINTIFF accordingly prays for the following relief:

3 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
4 enjoining DEFENDANT, its agents, employees, assigns, and all persons acting in concert or
5 participating with DEFENDANT, from distributing or selling the PRODUCTS in California
6 without first providing a clear and reasonable warning, within the meaning of Proposition 65,
7 that the consumers of the PRODUCTS are exposed to the LISTED CHEMICAL;

8 B. an injunction, pursuant to H&S Code §25249.7(b), compelling DEFENDANT
9 to identify and locate each individual who has purchased the PRODUCTS since March 19,
10 2017 and to provide a warning to such persons that ingestion of the PRODUCTS will expose
11 the consumer to chemicals known to cause birth defects and other reproductive harm;

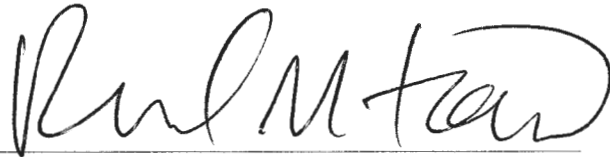
12 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
13 against DEFENDANT in the amount of \$2,500 per day for each violation of Proposition 65;

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

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

18
19 DATED: June 2, 2020

LAW OFFICE OF RICHARD M. FRANCO

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21 

22 Richard M. Franco
23 Attorney for Plaintiff
24 Environmental Research Center, Inc.
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EXHIBIT A

LAW OFFICE OF RICHARD M. FRANCO

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510.684.1022
RICK@RFRANCOLAW.COM

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Robert Graham
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edobroth@co.slo.ca.us

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

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

VIA ELECTRONIC MAIL

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DAProp65@co.santa-barbara.ca.us

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cfepd@yolocounty.org

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:

Let’s Talk Health, Inc.

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

- 1. Let's Talk Health Nutritional Supplements Varigone - Lead**
- 2. Let's Talk Health Nutritional Supplements Man Alive - Lead**
- 3. Let's Talk Health Nutritional Supplements Moringa - Lead**
- 4. Let's Talk Health Nutritional Supplements Liver Rejuv - Lead**
- 5. Let's Talk Health Menopause - Lead**
- 6. Let's Talk Health Stress Eze Plus Mood Enhancer - Lead**
- 7. Let's Talk Health Diatrol Plus - 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 has exposed and continues to expose numerous individuals within California to the

March 19, 2020

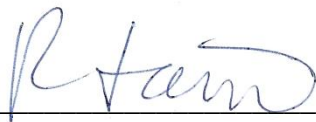
Page 4

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 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 March 19, 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 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,



Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Let's Talk Health, Inc. and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Let’s Talk Health, Inc.

I, Rick Franco, 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: March 19, 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 March 19, 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
Let’s Talk Health, Inc.
2411 Fenton St, Ste 102
Chula Vista, CA 91914

Robert Graham
(Registered Agent for Let’s Talk
Health, Inc.)
629 Third Ave, Ste I
Chula Vista, CA 91910

On March 19, 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 March 19, 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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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 19, 2020

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SanDiegoDAProp65@sdca.org

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CityAttyProp65@sandiego.gov

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Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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Bud Porter, Supervising Deputy District Attorney
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Jeffrey S. Rosell, District Attorney
Santa Cruz County
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daspecialops@ventura.org

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

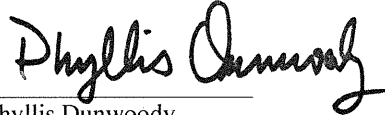
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 19, 2020

Page 8

On March 19, 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 March 19, 2020, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a large initial "P".

Phyllis Dunwoody

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

March 19, 2020

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Service List

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County
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Suite 245
Oroville, CA 95965

District Attorney, Colusa
County
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Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado
County
778 Pacific St
Placerville, CA 95667

District Attorney, Fresno
County
2220 Tulare Street, Suite
1000
Fresno, CA 93721

District Attorney, Glenn
County
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Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

District Attorney, Lake
County
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Lakeport, CA 95453

District Attorney, Los
Angeles County
Hall of Justice
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1200
Los Angeles, CA 90012

District Attorney, Madera
County
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Madera, CA 93637

District Attorney, Marin
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Room 130
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Mariposa, CA 95338

District Attorney,
Mendocino County
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Ukiah, CA 95482

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District Attorney, Modoc
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Alturas, CA 96101-4020

District Attorney, Mono
County
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Bridgeport, CA 93517

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Ste 240
Roseville, CA 95678

District Attorney, Plumas
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District Attorney, San Benito
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Hollister, CA 95023

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Bernardino County
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Los Angeles, CA 90012

San Jose City Attorney's
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16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.