

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address):
Richard T. Drury SBN 163559, Victoria A. Yundt SBN 326186
Lozeau | Drury LLP
1939 Harrison St, Suite 150
Oakland, CA 94612
TELEPHONE NO.: 510-836-4200 FAX NO.:

ATTORNEY FOR (Name): **Plaintiff Environmental Research Center, Inc. (ERC)**
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

FOR COURT USE ONLY
ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
01/12/2023 at 02:56:17 PM
By: Angela Linhares,
Deputy Clerk

CASE NAME:
Environmental Research Center, Inc. v. Mamma Chia, LLC et al.

CIVIL CASE COVER SHEET
 Unlimited
(Amount demanded exceeds \$25,000)
 Limited
(Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:
23CV025611
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:

| | | |
|--|--|---|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/WD (23) Non-P/IPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **2**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 12, 2023
Richard Drury (TYPE OR PRINT NAME)  (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.

F. ADDENDUM TO CIVIL CASE COVER SHEET

| | |
|--|---------------------|
| Short Title: Environmental Research Center, Inc. v. Mamma Chia, LLC et al. | Case Number: |
|--|---------------------|

CIVIL CASE COVER SHEET ADDENDUM

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

| | | <input type="checkbox"/> Hayward Hall of Justice (447) |
|---|--------------------------------------|---|
| <input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446) | | <input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448) |
| Civil Case Cover Sheet Category | Civil Case Cover Sheet Case Type | Alameda County Case Type (check only one) |
| 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 |
| Other PI /PD / WD Tort | Asbestos (04) | <input type="checkbox"/> 75 Asbestos (D) |
| | Product liability (24) | <input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G) |
| | Medical malpractice (45) | <input type="checkbox"/> 97 Medical malpractice (G) |
| | Other PI/PD/WD tort (23) | <input type="checkbox"/> 33 Other PI/PD/WD tort (G) |
| Non - PI /PD / WD Tort | Bus tort / unfair bus. practice (07) | <input type="checkbox"/> 79 Bus tort / unfair bus. practice (G) |
| | Civil rights (08) | <input type="checkbox"/> 80 Civil rights (G) |
| | Defamation (13) | <input type="checkbox"/> 84 Defamation (G) |
| | Fraud (16) | <input type="checkbox"/> 24 Fraud (G) |
| | Intellectual property (19) | <input type="checkbox"/> 87 Intellectual property (G) |
| | Professional negligence (25) | <input type="checkbox"/> 59 Professional negligence - non-medical (G) |
| | Other non-PI/PD/WD tort (35) | <input type="checkbox"/> 03 Other non-PI/PD/WD tort (G) |
| Employment | Wrongful termination (36) | <input type="checkbox"/> 38 Wrongful termination (G) |
| | Other employment (15) | <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) | <input type="checkbox"/> 04 Breach contract / Wrnty (G) |
| | Collections (09) | <input type="checkbox"/> 81 Collections (G) |
| | Insurance coverage (18) | <input type="checkbox"/> 86 Ins. coverage - non-complex (G) |
| | Other contract (37) | <input type="checkbox"/> 98 Other contract (G) |
| Real Property | Eminent domain / Inv Cdm (14) | <input type="checkbox"/> 18 Eminent domain / Inv Cdm (G) |
| | Wrongful eviction (33) | <input type="checkbox"/> 17 Wrongful eviction (G) |
| | Other real property (26) | <input type="checkbox"/> 36 Other real property (G) |
| Unlawful Detainer | Commercial (31) | <input type="checkbox"/> 94 Unlawful Detainer - commercial |
| | Residential (32) | <input type="checkbox"/> 47 Unlawful Detainer - residential |
| | Drugs (38) | <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) | <input type="checkbox"/> 41 Asset forfeiture |
| | Petition re: arbitration award (11) | <input type="checkbox"/> 62 Pet. re: arbitration award |
| | Writ of Mandate (02) | <input type="checkbox"/> 49 Writ of mandate |
| | Other judicial review (39) | <input type="checkbox"/> 64 Other judicial review |
| | | Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Provisionally Complex | Antitrust / Trade regulation (03) | <input type="checkbox"/> 77 Antitrust / Trade regulation |
| | Construction defect (10) | <input type="checkbox"/> 82 Construction defect |
| | Claims involving mass tort (40) | <input type="checkbox"/> 78 Claims involving mass tort |
| | Securities litigation (28) | <input type="checkbox"/> 91 Securities litigation |
| | Toxic tort / Environmental (30) | <input type="checkbox"/> 93 Toxic tort / Environmental |
| | Ins covrg from cmplx case type (41) | <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) | <input type="checkbox"/> 90 RICO (G) |
| | Partnership / Corp. governance (21) | <input type="checkbox"/> 88 Partnership / Corp. governance (G) |
| | Other complaint (42) | <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 |

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

MAMMA CHIA, LLC and DOES 1-100

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

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

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

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
01/12/2023
Chad Finke, Executive Officer / Clerk of the Court
By: A. Linhares 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): **23CV025611**

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 Drury, Victoria A. Yundt, 1939 Harrison St, Suite 150, Oakland, CA 94612 Tel: (510) 836-4200

DATE: (Fecha) 01/12/2023 Chad Finke, Executive Officer / Clerk of the Court Clerk, by A. Linhares, Deputy (Adjunto) (Secretario)

(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):

1 RICHARD T. DRURY (CBN 163559)
2 VICTORIA A. YUNDT (CBN 326186)
3 LOZEAU | DRURY LLP
4 1939 Harrison Street, Suite 150
5 Oakland, CA 94612
6 Ph: 510-836-4200
7 Email: richard@lozeaudrury.com
8 victoria@lozeaudrury.com

9 Attorneys for Plaintiff Environmental Research Center, Inc.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
01/12/2023 at 02:56:17 PM
By: Angela Linhares,
Deputy Clerk

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

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

15 **Plaintiff,**

16 **vs.**

17 **MAMMA CHIA, LLC and DOES 1-100**

18 **Defendants.**

19 **CASE NO. 23CV025611**

20 **COMPLAINT FOR INJUNCTIVE**
21 **AND DECLARATORY RELIEF AND**
22 **CIVIL PENALTIES**

23 [Miscellaneous Civil Complaint (42)]
24 Proposition 65, Health & Safety Code
25 Section 25249.5 et seq.]

26 Plaintiff Environmental Research Center, Inc. hereby alleges:

27 **I**

28 **INTRODUCTION**

1. Plaintiff Environmental Research Center, Inc. (hereinafter “Plaintiff” or “ERC”) brings this action as a private attorney general enforcer and in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,” mandates that businesses with ten or more employees must provide a “clear and reasonable warning” prior to exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity. Lead and mercury are chemicals known to the State of California to cause cancer and/or birth defects, and other reproductive harm. This Complaint seeks

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

7 II

8 PARTIES

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

13 3. Defendant Mamma Chia is a business that develops, manufactures, markets, distributes,
14 and/or sells nutritional health products that have exposed users to lead and/or mercury in the
15 State of California within the relevant statute of limitations period. These “SUBJECT
16 PRODUCTS” (as identified in the Notices of Violation dated May 3, 2022 and May 10, 2022
17 attached hereto as *Exhibits A* and *B*) are: (1) Mamma Chia Organic Chia Prebiotic Squeeze
18 Snack Strawberry Lemonade (lead), (2) Mamma Chia Organic Chia Squeeze Vitality Snack
19 Wild Raspberry (lead), (3) Mamma Chia Organic Chia Squeeze Vitality Snack Strawberry
20 Banana (lead, mercury), (4) Mamma Chia Organic Chia Squeeze Vitality Snack Blackberry
21 Bliss (lead), (5) Mamma Chia Organic Chia Squeeze Vitality Snack Green Magic (lead,
22 mercury), and (6) Mamma Chia Organic Chia Energy Squeeze Energy Snack Berry Burst
23 (lead). Mamma Chia, LLC is a company subject to Proposition 65 as it employs ten or more
24 persons and has employed ten or more persons at all times relevant to this action.

25 4. Defendants Does 1-100, are named herein under fictitious names, as their true names
26 and capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that
27 each of said Does is responsible, in some actionable manner, for the events and happenings
28 hereinafter referred to, either through said Does’ conduct, or through the conduct of its agents,

1 servants or employees, or in some other manner, causing the harms alleged by ERC in this
2 Complaint. When said true names and capacities of Does are ascertained, ERC will seek leave
3 to amend this Complaint to set forth the same.

4 III

5 JURISDICTION AND VENUE

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

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

15 7. The Complaint is based on allegations contained in the Notices of Violation dated
16 May 3, 2022 and May 10, 2022 served on the California Attorney General, other public
17 enforcers, and Mamma Chia. The Notices of Violation constitute adequate notice to Mamma
18 Chia because they provided adequate information to allow Mamma Chia to assess the nature of
19 the alleged violations, consistent with Proposition 65 and its implementing regulations. A
20 certificate of merit and a certificate of service accompanied each copy of the Notices of
21 Violation, and both certificates comply with Proposition 65 and its implementing regulations.
22 The Notices of Violation served on Mamma Chia also included a copy of “The Safe Drinking
23 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.” Service of the
24 Notices of Violation and accompanying documents complied with Proposition 65 and its
25 implementing regulations. Attached hereto as *Exhibits A* and *B* are true and correct copies of
26 the Notices of Violation and associated documents. More than 60 days have passed since ERC
27 mailed the Notices of Violation and no public enforcement entity has filed a Complaint in this
28 case.

1 8. This Court is the proper venue for the action because the causes of action have arisen in
2 the County of Alameda where some of the violations of law have occurred, and will continue to
3 occur, due to the ongoing sale of Mamma Chia's products. Furthermore, venue is proper in this
4 Court under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

5 **IV**

6 **STATUTORY BACKGROUND**

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

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

12 No person in the course of doing business shall knowingly and
13 intentionally expose any individual to a chemical known to the state to
14 cause cancer or reproductive toxicity without first giving clear and
15 reasonable warning to such individual, except as provided in Section
16 25249.10.

17 11. The Office of Environmental Health Hazard Assessment ("OEHHA"), a division of Cal
18 EPA, is the lead agency in charge of the implementation of Proposition 65. OEHHA
19 administers the Proposition 65 program and administers regulations that govern Proposition 65
20 in general, including warnings to comply with the statute. The warning regulations are found at
21 Title 27 of the California Code of Regulations, Article 6. The regulations define expose as "to
22 cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed
23 chemical. An individual may come into contact with a listed chemical through water, air, food,
24 consumer products and any other environmental exposure as well as occupational exposures."
(Cal. Code Regs., tit. 27, § 25102, subd. (i).)

25 12. In this case, the exposures are caused by consumer products. A consumer product is
26 defined as "any article, or component part thereof, including food, that is produced, distributed,
27 or sold for the personal use, consumption or enjoyment of a consumer." (Cal. Code Regs., tit.
28 27, § 25600.1, subd. (d).) Food "includes 'dietary supplements' as defined in California Code

1 of Regulations, title 17, section 10200.” (*Id.* at subd. (g).) A consumer product exposure is “an
2 exposure that results from a person’s acquisition, purchase, storage, consumption, or any
3 reasonably foreseeable use of a consumer product, including consumption of a food.” (*Id.* at
4 subd. (e).)

5 13. On August 30, 2016, the Office of Administrative Law approved the adoption of
6 OEHHA’s amendments to Article 6, Clear and Reasonable Warnings of the California Code of
7 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the
8 California Code of Regulations, Article 6 (sections 25601 *et seq.*) and replaced the repealed
9 sections with new regulations set forth in two new Subarticles to Article 6 that became
10 operative on August 30, 2018 (the “New Warning Regulations”). The New Warning
11 Regulations provide, among other things, methods of transmission and content of warnings
12 deemed to comply with Proposition 65. Mamma Chia is subject to the warning requirements set
13 forth in the New Warning Regulations that became operative on August 30, 2018.

14 14. Health & Safety Code section 25249.6 provides that “No person in the course of doing
15 business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
17 to such individual” The New Warning Regulations apply when clear and reasonable
18 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,
19 consumer product warnings “must be prominently displayed on a label, labeling, or sign, and
20 must be displayed with such conspicuousness as compared with other words, statements,
21 designs or devices on the label, labeling, or sign, as to render the warning likely to be seen,
22 read, and understood by an ordinary individual under customary conditions of purchase or use.”
23 (*Id.* at § 25601, subd. (c).)

24 15. Proposition 65 establishes a procedure by which the State is to develop a list of
25 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
26 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after
27 the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

28 16. Lead was listed as a chemical known to the State of California to cause developmental

1 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was
2 listed as a chemical known to the State of California to cause cancer on October 1, 1992.
3 (OEHHA Chemicals Considered or Listed Under Proposition 65 -
4 <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.) The MADL for lead
5 as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal. Code
6 Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is 15
7 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

8 17. Mercury and mercury compounds were listed as chemicals known to the State of
9 California to cause developmental toxicity in the fetus and male and female reproductive
10 toxicity on July 1, 1990 ([https://oehha.ca.gov/proposition-65/chemicals/mercury-and-mercury-](https://oehha.ca.gov/proposition-65/chemicals/mercury-and-mercury-compounds)
11 [compounds](https://oehha.ca.gov/proposition-65/chemicals/mercury-and-mercury-compounds)).

12 18. Proposition 65 provides that any person “violating or threatening to violate” Proposition
13 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,
14 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
15 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
16 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
17 (Health & Safety Code, § 25249.7, subd. (b)(1).)

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

22 V

23 **STATEMENT OF FACTS**

24 20. Mamma Chia has developed, manufactured, marketed, distributed, and/or sold the
25 SUBJECT PRODUCTS containing lead and/or mercury into the State of California.
26 Consumption of the SUBJECT PRODUCTS according to the directions and/or
27 recommendations provided for said products causes consumers to be exposed to lead at levels
28 exceeding the 0.5 micrograms per day MADL and/or to be exposed to mercury and requiring a

1 warning. Consumers have been ingesting these products for many years, without any
2 knowledge of their exposure to these very dangerous chemicals.

3 21. For many years, Mamma Chia has knowingly and intentionally exposed numerous
4 persons to lead and/or mercury without providing any type of Proposition 65 warning. Prior to
5 ERC's Notices of Violation and this Complaint, Mamma Chia failed to provide a warning on
6 the labels of the SUBJECT PRODUCTS or provide any other legally acceptable warning.
7 Mamma Chia has, at all times relevant hereto, been aware that the SUBJECT PRODUCTS
8 contained lead and/or mercury and that persons using these products have been exposed to these
9 chemicals. Mamma Chia has been aware of the presence of lead and/or mercury in the
10 SUBJECT PRODUCTS and has failed to disclose the presence of these chemicals to the public,
11 who undoubtedly believe they have been ingesting totally healthy and pure products pursuant to
12 the company's statements.

13 22. Both prior and subsequent to ERC's Notices of Violation, Mamma Chia failed to
14 provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning that they
15 have been exposed to chemicals known to the State of California to cause cancer and/or birth
16 defects and other reproductive harm. This failure to warn is ongoing.

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

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

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

1 25. Said violations render Mamma Chia liable for civil penalties, up to \$2,500 per day for
2 each violation, and subject Mamma Chia to injunction.

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

5 26. ERC refers to paragraphs 1-25, inclusive, and incorporates them herein by this
6 reference.

7 27. There exists an actual controversy relating to the legal rights and duties of the Parties,
8 within the meaning of Code of Civil Procedure section 1060, between ERC and Mamma Chia,
9 concerning whether Mamma Chia has exposed individuals to chemicals known to the State of
10 California to cause cancer and/or birth defects and other reproductive harm without providing
11 clear and reasonable warning.

12 **VI**

13 **PRAAYER**

14 WHEREFORE ERC prays for relief as follows:

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

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

21 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
22 Procedure section 1060 declaring that Mamma Chia has exposed individuals to lead and/or
23 mercury without providing clear and reasonable warning; and

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

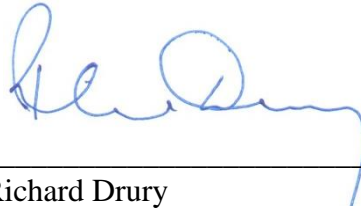
26 5. For costs of suit herein; and

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

28 ///

1 DATED: January 12, 2023

LOZEAU | DRURY LLP

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4 

5 _____
6 Richard Drury
7 Victoria A. Yundt
8 Attorneys for Plaintiff Environmental Research Center,
9 Inc.

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EXHIBIT A



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May 3, 2022

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

May 3, 2022

Page 3

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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)

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

Dear Addressees:

I represent 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:

Mamma Chia, LLC

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

- 1. Mamma Chia Organic Chia Prebiotic Squeeze Snack Strawberry Lemonade - Lead**
- 2. Mamma Chia Organic Chia Squeeze Vitality Snack Wild Raspberry – Lead**
- 3. Mamma Chia Organic Chia Squeeze Vitality Snack Strawberry Banana – Lead, Mercury**

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.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or mercury. 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 and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or mercury. The method of warning should be a warning that appears on the product’s label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or mercury. Each of these ongoing violations has occurred on every day since May 3, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

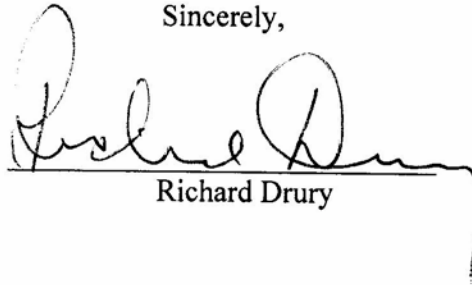
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified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

May 3, 2022

Page 5

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,

A handwritten signature in black ink, appearing to read "Richard Drury", is written over a horizontal line. The signature is cursive and extends to the right of the line.

Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Mamma Chia, LLC and its Registered Agents for Service of Process only)

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

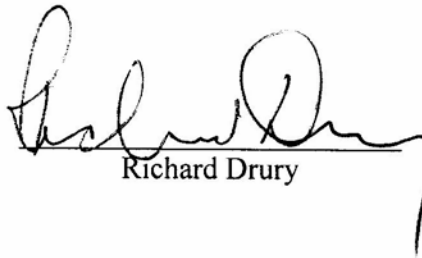
CERTIFICATE OF MERIT

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

I, Richard Drury, declare:

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

Dated: May 3, 2022


Richard Drury

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

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

On May 3, 2022, 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 CEO or President
Mamma Chia, LLC
6790 Embarcadero Lane, #100
Carlsbad, CA 92011

Janie Hoffman
(Registered Agent for Mamma Chia, LLC)
6790 Embarcadero Lane, #100
Carlsbad, CA 92011

Current CEO or President
Mamma Chia, LLC
5500 E. Francis St.
Ontario, CA 91761

The Corporation Trust Company
(Registered Agent for Mamma Chia, LLC)
Corporation Trust Center
1209 N. Orange St.
Wilmington, DE 19801

On May 3, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On May 3, 2022, 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:

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

May 3, 2022

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

May 3, 2022

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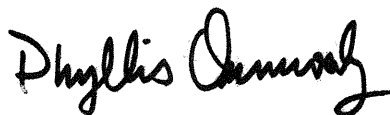
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On May 3, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 3, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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Los Angeles City
Attorney's Office
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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.

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.

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EXHIBIT B



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

May 10, 2022

Page 3

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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)

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

Dear Addressees:

I represent 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:

Mamma Chia, LLC

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

- 1. Mamma Chia Organic Chia Squeeze Vitality Snack Blackberry Bliss - Lead**
- 2. Mamma Chia Organic Chia Squeeze Vitality Snack Green Magic – Lead, Mercury**
- 3. Mamma Chia Organic Chia Energy Squeeze Energy Snack Berry Burst – 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.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or mercury. 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 and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or mercury. The method of warning should be a warning that appears on the product’s label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or mercury. Each of these ongoing violations has occurred on every day since May 10, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

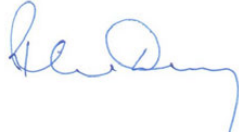
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 10, 2022

Page 5

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,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Mamma Chia, LLC and its Registered Agents for Service of Process only)

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

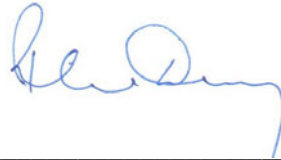
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Mamma Chia, LLC

I, Richard Drury, declare:

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

Dated: May 10, 2022



Richard Drury

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

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

On May 10, 2022, 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 CEO or President
Mamma Chia, LLC
6790 Embarcadero Lane, #100
Carlsbad, CA 92011

Janie Hoffman
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Current CEO or President
Mamma Chia, LLC
5500 E. Francis St.
Ontario, CA 91761

The Corporation Trust Company
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Corporation Trust Center
1209 N. Orange St.
Wilmington, DE 19801

On May 10, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On May 10, 2022, 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:

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

May 10, 2022

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

May 10, 2022

Page 9

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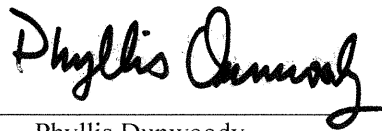
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On May 10, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 10, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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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.

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.