

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
 Matthew C. Maclear SBN 209228 Anthony M. Barnes SBN 199048  
 Aqua Terra Aeris Law Group  
 4030 Martin Luther King Jr. Way  
 Oakland, CA 94609  
 TELEPHONE NO.: 415 568 5200 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:  
 CITY AND ZIP CODE: Oakland, CA 94612  
 BRANCH NAME: Rene C. Davidson  
 CASE NAME:  
 Environmental Research Center, Inc. v. Non Acidic Beverages, LLC et al.

FOR COURT USE ONLY

**ELECTRONICALLY FILED**  
 Superior Court of California,  
 County of Alameda  
 03/01/2023 at 12:51:44 PM  
 By: Angela Linhares,  
 Deputy Clerk

**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:  
**23CV028537**

JUDGE:  
 DEPT:

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

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

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

a.  Large number of separately represented parties      d.  Large number of witnesses  
 b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve      e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c.  Substantial amount of documentary evidence      f.  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: March 1, 2023  
 Anthony M. Barnes  
 (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. Non Acidic Beverages, 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

[ ] Hayward Hall of Justice (447)

Oakland, Rene C. Davidson Alameda County Courthouse (446)

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

**SUMMONS**  
**(CITACION JUDICIAL)**

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

NON ACIDIC BEVERAGES, LLC, individually and dba  
NOOMA; 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

03/01/2023

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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):

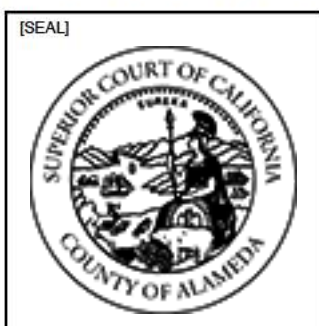
**23CV028537**

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):

**Anthony M. Barnes, 4030 Martin Luther King Jr. Way, Oakland, CA 94609 (971) 371-8293**

DATE: (Fecha) 03/01/2023 Chad Finke, Executive Officer / Clerk of the Court Clerk, by (Secretario)           A. Linhares          , 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: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):

1 Matthew C. Maclear (SBN 209228)  
2 Anthony M. Barnes (SBN 199048)  
3 Aqua Terra Aeris Law Group  
4 4030 Martin Luther King Jr. Way  
5 Oakland, CA 94609  
6 Telephone: (415) 568-5200  
7 Email: mcm@atalawgroup.com  
8 amb@atalawgroup.com

9 Attorneys for Plaintiff Environmental Research Center, Inc.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Alameda  
03/01/2023 at 12:51:44 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 **NON ACIDIC BEVERAGES, LLC,**  
18 **individually and dba NOOMA; and DOES 1-**  
19 **100**

20 **Defendants.**

**CASE NO. 23CV028537**

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF AND  
CIVIL PENALTIES**

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

21 Plaintiff Environmental Research Center, Inc. hereby alleges:

22 **I**

23 **INTRODUCTION**

24 1. Plaintiff Environmental Research Center, Inc. (hereinafter “Plaintiff” or “ERC”) brings  
25 this action as a private attorney general enforcer and in the public interest pursuant to Health &  
26 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement  
27 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,”  
28 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

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

## 9 II

### 10 PARTIES

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

15 3. Defendant NOOMA is a business that develops, manufactures, markets, distributes,  
16 and/or sells nutritional health products that have exposed users to lead and/or mercury in the  
17 State of California within the relevant statute of limitations period. These “SUBJECT  
18 PRODUCTS” (as identified in the Notices of Violation dated July 14, 2022 and August 18,  
19 2022 attached hereto as *Exhibits A* and *B*) are: (1) NOOMA Organic Sport Energy Drink  
20 Dragon Fruit (mercury), (2) NOOMA Sports Drink Clean Hydration Blueberry Peach  
21 (mercury), (3) NOOMA Organic Sport Hydration Drink Mango (mercury), and (4) NOOMA  
22 Organic Sport Energy Drink Pineapple Mango (lead). Non Acidic Beverages, LLC, individually  
23 and dba NOOMA is a company subject to Proposition 65 as it employs ten or more persons and  
24 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 NOOMA because NOOMA has sufficient minimum  
11 contacts with California, and otherwise intentionally avails itself of the California market  
12 through the marketing, distribution, and/or sale of the SUBJECT PRODUCTS in the State of  
13 California so as to render the exercise of jurisdiction over it by the California courts consistent  
14 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 July 14, 2022 and August 18, 2022, served on the California Attorney General, other public  
17 enforcers, and NOOMA. The Notices of Violation constitute adequate notice to NOOMA  
18 because they provided adequate information to allow NOOMA to assess the nature of the  
19 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 NOOMA also included a copy of “The Safe Drinking Water  
23 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.” Service of the Notices of  
24 Violation and accompanying documents complied with Proposition 65 and its implementing  
25 regulations. Attached hereto as *Exhibits A* and *B* are true and correct copies of the Notices of  
26 Violation and associated documents. More than 60 days have passed since ERC mailed the  
27 Notices of Violation and no public enforcement entity has filed a Complaint in this case.

28 8. This Court is the proper venue for the action because the causes of action have arisen in

1 the County of Alameda where some of the violations of law have occurred, and will continue to  
2 occur, due to the ongoing sale of NOOMA’s products. Furthermore, venue is proper in this  
3 Court under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

4 **IV**

5 **STATUTORY BACKGROUND**

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

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

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

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

24 12. In this case, the exposures are caused by consumer products. A consumer product is  
25 defined as “any article, or component part thereof, including food, that is produced, distributed,  
26 or sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit.  
27 27, § 25600.1, subd. (d).) Food “includes ‘dietary supplements’ as defined in California Code  
28 of Regulations, title 17, section 10200.” (*Id.* at subd. (g).) A consumer product exposure is “an

1 exposure that results from a person’s acquisition, purchase, storage, consumption, or any  
2 reasonably foreseeable use of a consumer product, including consumption of a food.” (*Id.* at  
3 subd. (e).)

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

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

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

27 16. Lead was listed as a chemical known to the State of California to cause developmental  
28 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was



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

7 17. Mercury and mercury compounds were listed as chemicals known to the State of  
8 California to cause developmental toxicity in the fetus and male and female reproductive  
9 toxicity on July 1, 1990 (OEHHA Chemicals Considered or Listed Under Proposition 65 -  
10 <https://oehha.ca.gov/proposition-65/chemicals/mercury-and-mercury-compounds>).

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

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

## 21 V

### 22 **STATEMENT OF FACTS**

23 20. NOOMA has developed, manufactured, marketed, distributed, and/or sold the  
24 SUBJECT PRODUCTS containing lead and/or mercury into the State of California.  
25 Consumption of the SUBJECT PRODUCTS according to the directions and/or  
26 recommendations provided for said products cause consumers to be exposed to lead at levels  
27 exceeding the 0.5 micrograms per day MADL and/or to be exposed to mercury and requiring a  
28 warning. Consumers have been ingesting these products for many years, without any

1 knowledge of their exposure to these very dangerous chemicals.

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

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

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

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

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

27 ///

28 ///

1 25. Said violations render NOOMA liable for civil penalties, up to \$2,500 per day for each  
2 violation, and subject NOOMA 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 NOOMA,  
9 concerning whether NOOMA 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 **PRAYER**

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 NOOMA 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 NOOMA has exposed individuals to lead and/or mercury  
23 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: March 1, 2023

AQUA TERRA AERIS LAW GROUP

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3 \_\_\_\_\_  
4 Matthew C. Maclear  
5 Anthony M. Barnes  
6 Attorneys for Environmental Research Center, Inc.  
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# EXHIBIT A



Matthew Maclear  
[mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
415-568-5200

Anthony Barnes  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)  
415-326-3173

July 14, 2022

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Non Acidic Beverages, LLC, individually and dba NOOMA**



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
July 14, 2022  
Page 2

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

1. **NOOMA Organic Sport Energy Drink Dragon Fruit - Mercury**
2. **NOOMA Sports Drink Clean Hydration Blueberry Peach - Mercury**
3. **NOOMA Organic Sport Hydration Drink Mango - Mercury**

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.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least July 14, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
July 14, 2022  
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

---

Matthew Maclear  
**AQUA TERRA AERIS LAW GROUP**

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Non Acidic Beverages, LLC, individually and dba NOOMA and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)





Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
July 14, 2022  
Page 4

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Non Acidic Beverages, LLC, individually and dba NOOMA**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: July 14, 2022

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style and is positioned above a horizontal line.

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
July 14, 2022  
Page 5

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On July 14, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Non Acidic Beverages, LLC, individually  
and dba NOOMA  
23555 Euclid Ave, Bldg 32  
Cleveland, OH 44117

Jarred Smith  
(Registered Agent for Non Acidic Beverages, LLC, individually  
and dba NOOMA)  
23555 Euclid Ave, Bldg 32  
Cleveland, OH 44117

Todd Fenton  
(Registered Agent for Non Acidic Beverages, LLC,  
individually and dba NOOMA.)  
4420 Sombrero Circle  
Littleton, CO 80123

JH Corporate Services, Inc.  
(Registered Agent for Non Acidic Beverages, LLC, individually  
and dba NOOMA)  
60 E Simpson Ave  
PO Box 2095  
Jackson, WY 83001

On July 14, 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 July 14, 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:



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

July 14, 2022

Page 6

Nancy O'Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
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CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
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Prop65Env@co.calaveras.ca.us

Stacey Grassini, Deputy District Attorney  
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Martinez, CA 94553  
sgrassini@contracostada.org

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Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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168 North Edwards Street  
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Prop65@sacda.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
July 14, 2022  
Page 7

Summer Stephan, District Attorney  
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Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
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Christopher Dalbey, Deputy District Attorney  
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Santa Barbara, CA 93101  
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cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
July 14, 2022  
Page 8

On July 14, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on July 14, 2022, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a horizontal line underneath it.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
July 14, 2022  
Page 9

### Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 <sup>th</sup> St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, San Mateo County 400 County Ctr , 3rd Floor Redwood City, CA 94063	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St , Ste 1200 Los Angeles, CA 90012	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

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

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

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

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

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

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

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

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

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

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

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



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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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

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# EXHIBIT B



Matthew Maclear  
[mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
415-568-5200

Anthony Barnes  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)  
415-326-3173

August 18, 2022

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Non Acidic Beverages, LLC, individually and dba NOOMA**



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 2

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**NOOMA Organic Sport Energy Drink Pineapple Mango – 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.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least August 18, 2019, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

---

Matthew Maclear  
**AQUA TERRA AERIS LAW GROUP**

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Non Acidic Beverages, LLC, individually and dba NOOMA and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 4

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Non Acidic Beverages, LLC, individually and dba NOOMA**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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.

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style and is positioned above a horizontal line.

Dated: August 18, 2022

Matthew Maclear





Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 5

**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 August 18, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Non Acidic Beverages, LLC, individually  
and dba NOOMA  
23555 Euclid Ave, Bldg 32  
Cleveland, OH 44117

Jarred Smith  
(Registered Agent for Non Acidic Beverages, LLC, individually  
and dba NOOMA)  
23555 Euclid Ave, Bldg 32  
Cleveland, OH 44117

Todd Fenton  
(Registered Agent for Non Acidic Beverages, LLC,  
individually and dba NOOMA.)  
4420 Sombrero Circle  
Littleton, CO 80123

JH Corporate Services, Inc.  
(Registered Agent for Non Acidic Beverages, LLC, individually  
and dba NOOMA)  
60 E Simpson Ave  
PO Box 2095  
Jackson, WY 83001

On August 18, 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 August 18, 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:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 6

Nancy O'Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Jeannine M. Pacioni, District Attorney  
Monterey County  
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Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Allison Haley, District Attorney  
Napa County  
1127 First Street, Ste C  
Napa, CA 94559  
CEPD@countyofnapa.org

Stacey Grassini, Deputy District Attorney  
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900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Clifford H. Newell, District Attorney  
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201 Commercial St  
Nevada City, CA 95959  
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Lisa A. Smittcamp, District Attorney  
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Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Thomas L. Hardy, District Attorney  
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Independence, CA 93526  
inyoda@inyocounty.us

Morgan Briggs Gire, District Attorney  
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10810 Justice Center Drive  
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Michelle Latimer, Program Coordinator  
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mlatimer@co.lassen.ca.us

David Hollister, District Attorney  
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Quincy, CA 95971  
davidhollister@countyofplumas.com

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P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

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Riverside, CA 92501  
Prop65@rivcoda.org

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Prop65@countyofmerced.com

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901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 7

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

Mark Ankorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney  
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San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
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San Francisco, CA 94102  
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney  
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Stockton, CA 95202  
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County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

Bud Porter, Supervising Deputy District Attorney  
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70 W Hedding St  
San Jose, CA 95110  
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200 E. Santa Clara Street, 16<sup>th</sup> Floor  
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Proposition65notices@sanjoseca.gov

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Jeannie.Barnes@sonoma-county.org

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daspecialops@ventura.org

Jeff W. Reising, District Attorney  
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Woodland, CA 95695  
cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 8

On August 18, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on August 18, 2022, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

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Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 18, 2022  
Page 9

**Service List**

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 <sup>th</sup> St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, San Mateo County 400 County Ctr , 3rd Floor Redwood City, CA 94063	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St , Ste 1200 Los Angeles, CA 90012	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

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

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

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

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

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

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

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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



## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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