

**SUMMONS
(CITACION JUDICIAL)**

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

ELMHURST MILKED LLC; ELMHURST MILKED DIRECT 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

04/03/2023

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, California 94612

CASE NUMBER:
(Número del Caso):

23CV030405

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):

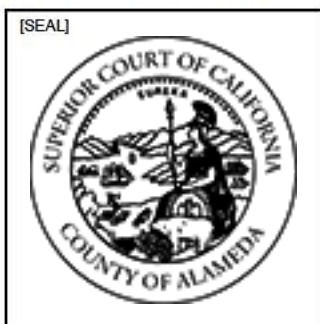
Charles W. Poss, ERC, Inc., 3111 Camino Del Rio North, Ste. 400, San Diego, CA 92108 (619) 500-3090

DATE:
(Fecha) 04/03/2023

Clerk, by Chad Finke, Executive Officer / Clerk of the Court, Deputy
(Secretario) A. Linhares (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): Elmhurst Milked LLC

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 Charles W. Poss (SBN 325366)
2 Environmental Research Center, Inc.
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Email: charles.poss@erc501c3.org
7 Attorney for Plaintiff Environmental Research Center, Inc.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
04/03/2023 at 07:25:09 AM
By: Angela Linhares,
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

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

13 **Plaintiff,**

14 vs.

15 **ELMHURST MILKED LLC; ELMHURST**
16 **MILKED DIRECT LLC; and DOES 1-100**

17 **Defendants.**

CASE NO. 23CV030405

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

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

18
19 Plaintiff Environmental Research Center, Inc. hereby alleges:

20 **I**

21 **INTRODUCTION**

22 1. Plaintiff Environmental Research Center, Inc. (hereinafter “Plaintiff” or “ERC”) brings
23 this action as a private attorney general enforcer and in the public interest pursuant to Health &
24 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement
25 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,”
26 mandates that businesses with ten or more employees must provide a “clear and reasonable
27 warning” prior to exposing any individual to a chemical known to the state to cause cancer or
28 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
2 injunctive and declaratory relief and civil penalties to remedy the ongoing failure of Defendants
3 Elmhurst Milked LLC and Elmhurst Milked Direct LLC (collectively “Elmhurst”) and Does 1-
4 100 (hereinafter individually referred to as “Defendant” or collectively as “Defendants”), to
5 warn consumers that they have been exposed to lead and/or mercury from a number of
6 Elmhurst’s nutritional health products as set forth in paragraph 3 at levels exceeding the
7 applicable Maximum Allowable Dose Level (“MADL”) and requiring a warning pursuant to
8 Health & 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 Elmhurst 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 January 5, 2023 and January 12,
19 2023 attached hereto as *Exhibits A* and *B*) are: (1) Elmhurst Plant Based Oat Creamer
20 Unsweetened (lead), (2) Elmhurst Milked Oats Chocolate (lead, mercury), (3) Elmhurst Oat
21 Latte Matcha (mercury), (4) Elmhurst Oat Latte Flash Brew (mercury), (5) Elmhurst Milked
22 Oats Blueberry (lead, mercury), (6) Elmhurst Milked Cashews Barista Approved (lead), and (7)
23 Elmhurst Plant Based Oat Barista Made From Whole Grain Oats (mercury). Elmhurst Milked
24 LLC and Elmhurst Milked Direct LLC are companies subject to Proposition 65 as they employ
25 ten or more persons and have employed ten or more persons at all times relevant to this action.

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

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

5 III

6 **JURISDICTION AND VENUE**

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

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

16 7. The Complaint is based on allegations contained in the Notices of Violation dated
17 January 5, 2023 and January 12, 2023, served on the California Attorney General, other public
18 enforcers, and Elmhurst. The Notices of Violation constitute adequate notice to Elmhurst
19 because they provided adequate information to allow Elmhurst to assess the nature of the
20 alleged violations, consistent with Proposition 65 and its implementing regulations. A
21 certificate of merit and a certificate of service accompanied each copy of the Notices of
22 Violation, and both certificates comply with Proposition 65 and its implementing regulations.
23 The Notices of Violation served on Elmhurst also included a copy of "The Safe Drinking Water
24 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." Service of the Notices of
25 Violation and accompanying documents complied with Proposition 65 and its implementing
26 regulations. Attached hereto as *Exhibits A* and *B* are true and correct copies of the Notices of
27 Violation and associated documents. More than 60 days have passed since ERC mailed the
28 Notices of Violation and no public enforcement entity has filed a Complaint in this 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 Elmhurst’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. Elmhurst 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 (*see* <https://oehha.ca.gov/proposition-65/chemicals/mercury-and-mercury-compounds>).
11

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

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

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

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

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

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

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

28 25. Said violations render Elmhurst liable for civil penalties, up to \$2,500 per day for each

1 violation, and subject Elmhurst to injunction.

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

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

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

11 **VI**

12 **PRAYER**

13 WHEREFORE ERC prays for relief as follows:

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

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

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

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

25 5. For costs of suit herein; and

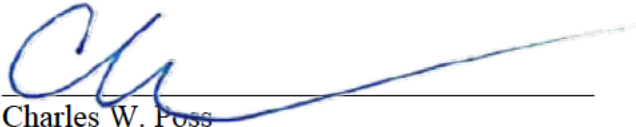
26 6. For such other relief as the Court may deem just and proper.

27 ///

28 ///

1 DATED: April 3, 2023

ENVIRONMENTAL RESEARCH CENTER, INC.

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4 Charles W. Foss
In-House Counsel

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EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

January 5, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). 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 Violators 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 Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Elmhurst Milked LLC
Elmhurst Milked Direct LLC**

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

- 1. Elmhurst Plant Based Oat Creamer Unsweetened - Lead**
- 2. Elmhurst Milked Oats Chocolate – Lead, Mercury**
- 3. Elmhurst Oat Latte Matcha - Mercury**
- 4. Elmhurst Oat Latte Flash Brew - 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.

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

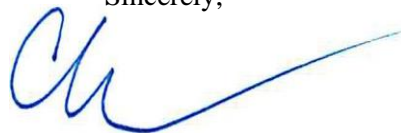
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 5, 2020, 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 these known toxic chemicals are 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 chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, 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 chemicals, as well as expensive and time-consuming litigation.

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Elmhurst Milked LLC, Elmhurst Milked Direct LLC, and their 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 Elmhurst Milked LLC and Elmhurst Milked Direct LLC

I, Charles Poss, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

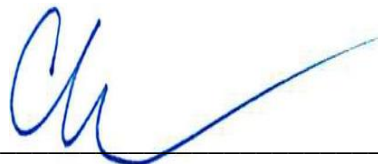
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 5, 2023



Charles Poss

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 January 5, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Elmhurst Milked LLC and
Elmhurst Milked Direct LLC
1150 Maple Rd
Elma, NY 14059

National Registered Agents, Inc.
(Registered Agent for Elmhurst Milked LLC and
Elmhurst Milked Direct LLC)
1209 N. Orange St
Wilmington, DE 19801

National Registered Agents, Inc.
(Registered Agent for Elmhurst Milked LLC)
7700 E Arapahoe Rd, Ste 220
Centennial, CO 80112

The LLC
(Registered Agent for Elmhurst Milked LLC)
1150 Maple Rd
Elma, NY 14059

On January 5, 2023, 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
Post Office Box 70550
Oakland, CA 94612-0550

On January 5, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

January 5, 2023

Page 5

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

January 5, 2023

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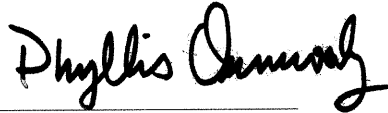
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Nora V. Frimann, City Attorney
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301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On January 5, 2023, 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 January 5, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

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

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

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

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

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

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

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

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
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3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, San Benito
County
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Hollister, CA 95023

District Attorney, San
Bernardino County
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San Bernadino, CA 92415

District Attorney, San Mateo
County
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Redwood City, CA 94063

District Attorney, Shasta
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Redding, CA 96001

District Attorney, Sierra
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District Attorney, Siskiyou
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District Attorney, Solano
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Fairfield, CA 94533

District Attorney, Stanislaus
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Modesto, CA 95354

District Attorney, Sutter
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District Attorney, Trinity
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Weaverville, CA 96093

District Attorney, Tuolumne
County
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Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

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



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

January 12, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). 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 Violators 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 Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Elmhurst Milked LLC
Elmhurst Milked Direct LLC

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

- 1. Elmhurst Milked Oats Blueberry – Lead, Mercury**
- 2. Elmhurst Milked Cashews Barista Approved - Lead**
- 3. Elmhurst Plant Based Oat Barista Made From Whole Grain Oats - 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.

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 these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 12, 2020, 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 these known toxic chemicals are 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 chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, 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 chemicals, as well as expensive and time-consuming litigation.

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Elmhurst Milked LLC, Elmhurst Milked Direct LLC, and their 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 Elmhurst Milked LLC and Elmhurst Milked Direct LLC

I, Charles Poss, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

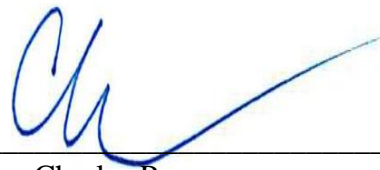
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 12, 2023



Charles Poss

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 January 12, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Elmhurst Milked LLC and
Elmhurst Milked Direct LLC
1150 Maple Rd
Elma, NY 14059

National Registered Agents, Inc.
(Registered Agent for Elmhurst Milked LLC and
Elmhurst Milked Direct LLC)
1209 N. Orange St
Wilmington, DE 19801

National Registered Agents, Inc.
(Registered Agent for Elmhurst Milked LLC)
7700 E Arapahoe Rd, Ste 220
Centennial, CO 80112

The LLC
(Registered Agent for Elmhurst Milked LLC)
1150 Maple Rd
Elma, NY 14059

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Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

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

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

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

January 12, 2023

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

January 12, 2023

Page 6

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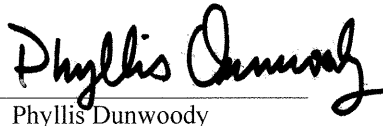
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On January 12, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached 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 January 12, 2023, 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.