Michael Freund (SBN 99687)
Ryan Hoffman (SBN 283297)
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

Trenton H. Norris (SBN 164781)
trent.norris@aporter.com
Sarah Esmaili (SBN 206053)
sarah.esmaili@aporter.com
ARNOLD & PORTER LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 415-3400

Attorneys for Defendant
ULTIMATE NUTRITION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER, a California non-profit corporation,

Plaintiff,

v.

ULTIMATE NUTRITION, INC. and DOES 1-100,

Defendants.

CASE NO. RG14737474

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 18, 2014
Trial Date: None set

1. INTRODUCTION

1.1 On August 18, 2014, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against Ultimate Nutrition, Inc. and Does 1-100 (collectively "Ultimate Nutrition"). In this action, ERC alleges that a number of products manufactured, distributed or sold by Ultimate Nutrition contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a "Covered Product" or collectively as "Covered Products") are: (1) Ultimate Nutrition Inc. Platinum Series Protein Isolate Chocolate Créme (discontinued), (2) Ultimate Nutrition Inc. ISO Sensation 93 Vanilla Bean, (3) Ultimate Nutrition Inc. Platinum Series Protein Isolate Vanilla Créme (discontinued), (4) Ultimate Nutrition Inc. ISO Sensation 93 Strawberry, and (5) Ultimate Nutrition Inc. ISO Sensation 93 Chocolate Fudge.

1.2 ERC and Ultimate Nutrition are hereinafter referred to individually as a "Party" or collectively as the "Parties."

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

1.4 For purposes of this Consent Judgment, the Parties agree that Ultimate Nutrition is a business entity that has employed ten or more persons at all times relevant to this action, and qualifies as a "person in the course of business" within the meaning of Proposition 65. Ultimate Nutrition manufactures, distributes and sells the Covered Products.

1.5 On December 17, 2014, Ultimate Nutrition filed a voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Connecticut (the "Bankruptcy Court"), and since that time, has continued to operate as a debtor in possession under title 11 of the United States Code (the "Bankruptcy Code"). *See In re Ultimate Nutrition Products, Inc.* Case No. 14-22402 (Bankr.D. Conn.). Ultimate Nutrition's Chapter 11 case before the Bankruptcy Court (the "Bankruptcy Case") remains pending.

1.6 On April 13, 2015, ERC filed a Proof of Claim with the Bankruptcy Court

asserting a general unsecured claim against Ultimate Nutrition in the amount of $5,000,000 based on the claims set forth in the Complaint (the "ERC Claim"). On October 8, 2015, Ultimate Nutrition filed with the Bankruptcy Court a Motion for Order to Estimate and Cap the Claim of Environmental Research Center, thereby seeking to estimate and cap the ERC Claim in the amount of $0 pursuant to section 502(c) of the Bankruptcy Code (the "Estimation Motion"), to which ERC filed an objection on November 4, 2015.

1.7 By separate stipulation, the Parties mutually resolved the Estimation Motion and ERC's objection thereto by stipulating that the ERC Claim shall be fixed in the amount of $100,000 with the understanding and expectation that ERC would receive a distribution of 50% of that amount as a general unsecured creditor under the Chapter 11 Plan of Reorganization for Ultimate Nutrition, Inc. and Prostar, Inc., filed with the Bankruptcy Court on November 18, 2015, as it may be amended or modified (the "Plan"). That stipulation is hereby incorporated and attached as Exhibit A (the "Bankruptcy Stipulation"), and includes as one of its provisions a lifting of the automatic stay imposed by the Bankruptcy Case only so that Ultimate Nutrition and ERC can enter into and obtain this Court's entry of this Consent Judgment. To the extent any material terms in this document contradict or alter the material terms in Exhibit A hereto, those terms in Exhibit A shall govern, control, and bind the Parties.

1.8 Ultimate Nutrition, the only named and identified Defendant in this case, is under the jurisdiction of the Bankruptcy Court and, has filed or intends to promptly file with the Bankruptcy Court a motion for approval of the Bankruptcy Stipulation and this Consent Judgment pursuant to Fed.R.Bankr.P. 9019. As such, the effectiveness of this Consent Judgment is conditioned upon the Bankruptcy Court's approval of the Bankruptcy Stipulation.

1.9 The Complaint is based on allegations contained in ERC's Sixty-Day Notice of Violation dated April 4, 2014, that was served on the California Attorney General, other public enforcers, and Ultimate Nutrition ("Notice"). A true and correct copy of the Notice is attached as Exhibit B and is hereby incorporated by reference. More than 60 days have passed since the Notice was mailed and uploaded to the Attorney General's website, and no designated governmental entity has filed a complaint against Ultimate Nutrition with regard to the Covered

Products or the alleged violations.

1.10 ERC's Notice and Complaint allege that use of the Covered Products exposes persons in California to lead without first providing clear and reasonable warnings in violation of California Health and Safety Code section 25249.6. Ultimate Nutrition denies all material allegations contained in the Notice and Complaint, and it maintains that the Covered Products do not require warnings under Proposition 65.

1.11 The Parties have entered into this Consent Judgment in order to settle, compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment shall be construed as an admission of ERC or Ultimate Nutrition of any fact, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Ultimate Nutrition of any fact, issue of law or violation of law. Nothing in this Consent Judgment or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by Ultimate Nutrition as to any fault, wrongdoing or liability whatsoever. The Parties agree that this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Consent Judgment.

1.12 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding unrelated to these proceedings.

1.13 The Effective Date of this Consent Judgment is the date on which it is entered as a Judgment by this Court.

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment and any further court action that may become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over Ultimate Nutrition as to the acts alleged in the Complaint, that venue is proper in Alameda County, and that, while the Bankruptcy Court has paramount jurisdiction to determine the allowance and amount of the ERC Claim, this Court has jurisdiction to enter this Consent

Judgment as a full and final resolution of all non-monetary claims with respect to Covered Products manufactured up through and including the Compliance Date (as that term is defined in Section 3.1, below) which were or could have been asserted in this action based on the facts alleged in the Notice and Complaint.

3. INJUNCTIVE RELIEF

3.1 Any Covered Products that are manufactured 150 days after the Effective Date (the "Compliance Date") that Ultimate Nutrition thereafter distributes into the State of California, offers for sale to a third party for retail sale in California, or directly sells in the State of California, shall either (1) contain no more than 0.5 micrograms of lead per day as calculated pursuant to Section 3.1.3 and as validated by the quality control methodology described in Section 3.4. or (2) meet the warning requirements under Section 3.2.

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Ultimate Nutrition knows will sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, the "Daily Lead Level" shall be calculated in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day.

3.1.3 For purposes of Section 3, the term "no more than 0.5 micrograms of lead per day" means that for each of the Covered Products the samples tested by Ultimate Nutrition under Section 3.4 collectively yield a daily exposure of no more than 0.5 micrograms of lead when calculated using the formula for the Daily Lead Level set forth in Section 3.1.2 and after subtracting the amount of lead deemed to be "naturally occurring" for each ingredient listed in Table 3.1.3 below. The amount of lead deemed "naturally occurring" in each of the Covered Products is the sum of the amounts of "naturally occurring" lead supplied by the quantity of

each ingredient listed in Table 3.1.3 that is present in each Covered Product. For each ingredient listed in Table 3.1.3, the amount of lead deemed "naturally occurring" is listed in Table 3.1.3 in micrograms of "naturally occurring" lead per gram of the ingredient that is contained in the Covered Product. If Ultimate Nutrition seeks to exclude naturally occurring lead in its calculation of overall lead content for any of the Covered Products, Ultimate Nutrition shall provide to ERC within fifteen (15) working days of ERC's written request, which ERC may make no earlier than the Compliance Date, a complete list of all ingredients in the Covered Products and the corresponding percentage and quantity in grams (rounded to the nearest one tenth of a gram) of each of the ingredients being used in each of the Covered Products and any other data (such as, without limitation, a written certification signed by a corporate officer) that independently confirms the percentage of the ingredients and quantity in grams of the ingredients being used in each Covered Product. Any documentation that Ultimate Nutrition submits to ERC pursuant to the terms of this Section shall be kept confidential.

Table 3.1.3

Ingredient	**Amount of lead ("Pb") per gram of ingredient deemed naturally occurring**
Calcium (elemental)	0.8 mcg Pb per gram of elemental calcium
Ferrous Fumarate	0.4 mcg Pb per gram of ferrous fumarate
Zinc Oxide	8.0 mcg Pb per gram of zinc oxide
Magnesium Oxide	0.4 mcg Pb per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg Pb per gram of magnesium carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of magnesium hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of zinc gluconate
Potassium Chloride	1.1 mcg Pb per gram of potassium chloride
Cocoa Powder	1.0 mcg Pb per gram of cocoa powder

3.2 Clear and Reasonable Warnings

If Ultimate Nutrition is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

WARNING: This product contains [lead,] a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.

Ultimate Nutrition shall use the phrase "cancer and" in the warning only if the maximum daily dose recommended on the label contains more than 15 micrograms of lead as determined pursuant to Sections 3.1.3 and 3.4. The bracketed term "[lead,]" may be provided by Ultimate Nutrition at its option.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the Covered Product's label or container, as applicable, and the word "**WARNING**" shall be in all capital letters and in bold print. Apart from the Warning, no additional statement discussing Proposition 65 or lead may be stated within the same physical location as the warning that appears on the label or container, as applicable.

Ultimate Nutrition must display the Warning with such conspicuousness, as compared with other words, statements, or design of the label or container, as applicable, to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

3.4 Testing and Quality Control Methodology

3.4.1 Prior to Ultimate Nutrition's first sale or distribution of Covered Products manufactured after the Compliance Date, Ultimate Nutrition shall arrange for lead testing of the Covered Products at least once a year for a minimum of three consecutive years by arranging for testing of five randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Ultimate Nutrition intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into California." The testing requirement does not apply to any of the Covered Products for which Ultimate Nutrition has provided the warning specified in Section 3.2. If

tests conducted pursuant to this Section demonstrate that no warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, Ultimate Nutrition changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products such that the change is reasonably likely to have a material effect on lead levels, Ultimate Nutrition shall test that Covered Product annually for at least two consecutive years after such change is made.

3.4.2 For purposes of measuring the "Daily Lead Level," the average lead detection result of the five randomly selected samples of the Covered Products will be controlling.

3.4.3 All testing pursuant to this Consent Judgment shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently agreed to in writing by the Parties.

3.4.4 All testing pursuant to this Consent Judgment shall be performed by an independent third party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third party laboratory that is registered with the United States Food & Drug Administration.

3.4.5 Nothing in this Consent Judgment shall limit Ultimate Nutrition's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

3.4.6 Upon fifteen days of receipt of written notice from ERC, Ultimate Nutrition shall send to ERC copies of all laboratory reports with results of testing for lead content under Section 3.4.1. Ultimate Nutrition shall retain all test results and documentation for a period of five years from the date of each test.

4. SETTLEMENT PAYMENT

4.1 By the Bankruptcy Stipulation, Ultimate Nutrition and ERC have stipulated that the ERC Claim shall be fixed and allowed in the amount of $100,000, which they acknowledge is a final adjudication of the amount of the ERC Claim, and that payment of the sum of $50,000 ("Total Settlement Amount") shall be in full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees, and costs. In furtherance of ERC receiving the Total Settlement Amount, Ultimate Nutrition acknowledges that ERC will be treated as the Holder of a General Unsecured Claim under the Plan and will receive a distribution on or before the effective date of the Plan of 50% of the ERC Claim, or the sum of $50,000. Ultimate Nutrition shall make this payment by wire transfer to ERC's escrow account, for which ERC will give Ultimate Nutrition the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 $11,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% ($8,250.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC shall not remit this amount to OEHHA until after the Court approves this settlement. ERC will retain the remaining 25% ($2,750.00) of the civil penalty.

4.3 $4220.28 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 $15,600.00 shall be distributed to Michael Freund as reimbursement of ERC's attorney's fees, while $19,179.72 shall be distributed to ERC for its in-house legal fees.

5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified only (i) by written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent judgment.

5.2 If Ultimate Nutrition seeks to modify this Consent Judgment under Section 5.1, then Ultimate Nutrition must provide written notice to ERC of its intent ("Notice of Intent"). If

ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must provide written notice to Ultimate Nutrition within thirty days of receiving the Notice of Intent. If ERC notifies Ultimate Nutrition in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC shall provide to Ultimate Nutrition a written basis for its position. The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

5.3 In the event that Ultimate Nutrition initiates or otherwise requests a modification under Section 5.1, and the meet and confer process leads to a joint motion or application of the Consent Judgment, Ultimate Nutrition shall reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process and filing and arguing the motion or application.

5.4 Where the meet-and-confer process does not lead to a joint motion or application in support of a modification of the Consent Judgment, then either Party may seek judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing Party" means a Party who is successful in obtaining relief more favorable to it than the relief that the other Party was amenable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of the modification.

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this Consent Judgment.

6.2 If ERC alleges that any Covered Product fails to meet the requirements of Section 3 (for which ERC alleges that no warning has been provided), then ERC shall inform

Ultimate Nutrition in a reasonably prompt manner of its test results, including information sufficient to permit Ultimate Nutrition to identify the Covered Products at issue. Ultimate Nutrition shall, within thirty days following receipt of such notice, provide ERC with testing information from an independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2 that demonstrates Ultimate Nutrition's compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

7. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to Covered Products which are distributed or sold exclusively outside the State of California and which are not used by California consumers.

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and Ultimate Nutrition, of any alleged violation of Proposition 65 for failure to provide Proposition 65 warnings for alleged exposures to lead from the handling, use or consumption of the Covered Products manufactured up through and including the Compliance Date. ERC, on behalf of the general public in the public interest, and on behalf of itself and its owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, hereby waives all rights to institute or participate in (directly or indirectly) any form of legal action and fully releases and discharges Ultimate Nutrition and its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers (including but not limited to Prostar, Inc.), franchisees, licensees, customers (not including private label customers of Ultimate Nutrition), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain

of any Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Covered Releasees") from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys' fees, investigation fees, and expert fees), costs and expenses (collectively referred to as "Claims") for alleged violations of Proposition 65 arising from the failure to provide warnings for any exposures to lead in Covered Products manufactured before the Compliance Date.

8.2 ERC on behalf of itself and its owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, and not on behalf of the general public, on one hand, and Ultimate Nutrition on its own behalf only, on the other, waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice or Complaint with respect to Covered Products manufactured up through and including the Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

8.3 In addition, ERC, on behalf of itself and its owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, and not on behalf of the general public, hereby releases and discharges the Covered Releasees from any and all known and unknown Claims arising from or relating to alleged violations of Proposition 65, or for any other statutory or common law, regarding alleged exposures to lead and lead compounds in the Covered Products manufactured up through and including the Compliance Date, including but not limited to the claims asserted by ERC in the Bankruptcy Case and in the products identified in ERC's January 14, 2011, October 22, 2010, and October 8, 2010 Proposition 65 Sixty-Day Notices of Violation. It is possible that other Claims released in this Section 8 and not known to the Parties will develop or be discovered. ERC, on behalf of itself only and Ultimate Nutrition acknowledge that this Consent Judgment is expressly intended to cover and include all such Claims, including all rights of action therefor. ERC has full knowledge of the contents

of California Civil Code section 1542. ERC, on behalf of itself only, and Ultimate Nutrition acknowledge that the Claims released in Sections 8.1 and 8.2 may include unknown Claims, and nevertheless waives California Civil Code section 1542 as to any such unknown Claims. California Civil Code section 1542 reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

ERC, on behalf of itself only, and Ultimate Nutrition acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

8.4 Compliance with the requirements of Section 3 of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 by any Covered Releasee with respect to any lead in the Covered Products.

8.5 Nothing in this Consent Judgment is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of Ultimate Nutrition's products other than the Covered Products.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

10. GOVERNING LAW

The terms and conditions of this Consent Judgment shall be governed by and construed in accordance with the laws of the State of California.

11. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via email may also be sent.

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090
Email: chris_erc501c3@yahoo.com

With a copy to:

Michael Freund
Ryan Hoffman
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR ULTIMATE NUTRITION, INC.

Ultimate Nutrition, Inc.
Attn: Brian Rubino
21 Hyde Road
PO BOX 643
Farmington, CT 06032

With a copy to:

Pullman and Comley
Attn: Irve Goldman
850 Main Street
P.O. Box 7006
Bridgeport, CT 06601-7006
igoldman@pullcom.com

Trenton H. Norris
trent.norris@aporter.com
Sarah Esmaili
sarah.esmaili@aporter.com
ARNOLD & PORTER LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 415-3400

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent Judgment.

12.2 If the California Attorney General objects to any term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to the hearing on the motion.

12.3 If this Consent Judgment is not approved by the Court, it shall be void and have no force or effect and Ultimate Nutrition shall have the right to seek the return to it of any settlement payments made under Section 4. In the event that Ultimate Nutrition exercises its right under this Section 12.3, it shall send written notice to ERC and ERC shall return all settlement payments made under Section 4 to Ultimate Nutrition within thirty (30) days' receipt of Ultimate Nutrition's written request.

13. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as the original signature.

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Consent

Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is filed, however, the prevailing Party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing Party" means a Party who is successful in obtaining relief more favorable to it than the relief that the other Party was amenable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

16. ENTIRE AGREEMENT, AUTHORIZATION

16.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

16.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided herein, each Party shall bear its own fees and costs.

17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: 12/3, 2015

ENVIRONMENTAL RESEARCH CENTER

By: _____
Chris Heptinstall, Executive Director

Dated: 12/3, 2015

ULTIMATE NUTRITION, INC.

By: BRIAN TUSSO
Its: CEO

APPROVED AS TO FORM:

Dated: 12/4, 2015

MICHAEL FREUND & ASSOCIATES

By: _____
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental Research Center

Dated: 12/4, 2015

ARNOLD & PORTER LLP

By: Sarah Esmaili
Trenton H. Norris
Sarah Esmaili
Attorneys for Defendant Ultimate Nutrition, Inc.

ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 12/15/15, 2015

GEORGE C. HERNANDEZ, JR.
Judge of the Superior Court

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

In re:	x	
	:	Chapter 11
ULTIMATE NUTRITION, INC., ET AL.[1]	:	Jointly Administered under Case No. 14-22402 (AMN)
	x	

STIPULATION IN SETTLEMENT OF MOTION TO ESTIMATE AND CAP CLAIM OF ENVIRONMENTAL RESEARCH CENTER

Debtors and Debtors-in-Possession, Ultimate Nutrition, Inc. ("Ultimate Nutrition" or "UNI") and Environmental Research Center ("ERC") (collectively, the "Parties"), hereby enter into this Stipulation in Settlement of Claim Estimation Motion to Estimate and Cap Claim of Environmental Research Center (the "Stipulation"), and stipulate and agree as follows:

WHEREAS, on December 17, 2014 (the "Petition Date"), Ultimate Nutrition filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Connecticut (the "Bankruptcy Court"), and has continued to manage its property and operate its business as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, on August 18, 2014, ERC, a non-profit corporation, as a private enforcer, and in the public interest, initiated an action against Ultimate Nutrition and Does 1-100 in the Superior Court of the State of California, Alameda County (the "California Action"), by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

[1] Ultimate Nutrition, Inc., Case No. 14-22402 and Prostar, Inc., Case No. 14-22403.

EXHIBIT B

Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

April 4, 2014

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 ("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:

Ultimate Nutrition, Inc.

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

a. **Ultimate Nutrition Inc. Platinum Series Protein Isolate Chocolate Crème – Lead**
b. **Ultimate Nutrition Inc. ISO Sensation 93 Vanilla Bean - Lead**
c. **Ultimate Nutrition Inc. Platinum Series Protein Isolate Vanilla Crème - Lead**
d. **Ultimate Nutrition Inc. ISO Sensation 93 Strawberry - Lead**
e. **Ultimate Nutrition Inc. ISO Sensation 93 Chocolate Fudge - 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 purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 4, 2011, 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 Violator violated Proposition 65 because it failed to provide persons handling and/or using 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 Violator 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; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

Michael Freund

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Ultimate Nutrition, Inc. and its Registered Agent for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Ultimate Nutrition, Inc.

I, Michael Freund, 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 chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: April 4, 2014

Michael Freund

Michael Freund

CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within entitled action. 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 April 4, 2014, 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 the party 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
Ultimate Nutrition, Inc.
PO Box 643
Farmington, CT 06034

Current President or CEO
Ultimate Nutrition, Inc.
21 Hyde Road
Farmington, CT 06032

CT Corporation System
(Ultimate Nutrition, Inc.'s Registered
Agent for Service of Process)
One Corporate Center
Hartford, CT 06103

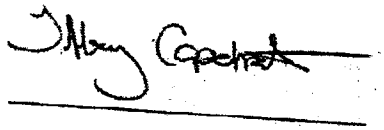
Current President or CEO
Ultimate Nutrition, Inc.
7 Corporate Avenue
Farmington, CT 06032

On April 4, 2014, I electronically served the following documents: **NOTICE OF VIOLATION, 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)** on the following party by uploading a true and correct copy thereof 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 April 4, 2014, 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 Priority Mail.

Executed on April 4, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

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

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

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

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

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

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

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

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, Inyo County
230 W. Line Street
Bishop, CA 93514

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, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

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

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

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

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

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

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, Monterey County
Post Office Box 1131
Salinas, CA 93902

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francsico, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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 "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that 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

[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.

damage to 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 this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 until12 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 as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 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 a 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 a Food. Certain exposures to chemicals that occur in foods naturally (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[2] 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 into 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 the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an 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.

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: July, 2012

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