

1 Richard M. Franco, SBN 170970  
2 Law Office of Richard M. Franco  
3 6500 Estates Drive  
4 Oakland, CA 94611  
5 Telephone: (510) 684-1022  
6 Email: rick@rfrancolaw.com

7 Attorneys for Plaintiff  
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 Anthony Cortez, SBN 251743  
10 Greg Sperla, SBN 278062  
11 Greenberg Traurig, LLP  
12 1201 K Street, Suite 1100  
13 Sacramento, CA 95814  
14 Telephone: (916) 442-1111  
15 Fax: (916) 448-1709  
16 Email: cortezan@gtlaw.com  
17 sperlag@gtlaw.com

18 Attorneys for Defendant  
19 MAXIMUM HUMAN PERFORMANCE, LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 COUNTY OF ALAMEDA

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

25 Plaintiff,

26 v.

27 MAXIMUM HUMAN PERFORMANCE,  
28 LLC, a New Jersey Limited Liability  
29 Company,

30 Defendant.

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 09 2016

CLERK OF THE SUPERIOR COURT  
By Christina Momon, Deputy

CASE NO. RG15776150

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 30, 2015

Trial Date: TBD

1       **1. INTRODUCTION**

2           **1.1**       On June 30, 2015, Plaintiff Environmental Research Center, Inc. (“ERC”), a  
3 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the  
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
6 against Maximum Human Performance, LLC (“MHP”). Subsequently, on or about May 27,  
7 2016, an Amended Complaint (the “Amended Complaint”) was filed. In this action, ERC  
8 alleges that a number of products manufactured, distributed or sold by MHP contain lead, a  
9 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
10 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
11 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
12 Products”) are: (1) Maximum Human Performance LLC MHP Up Your Mass Vanilla; (2)  
13 Maximum Human Performance LLC MHP A-Bomb; (3) Maximum Human Performance LLC  
14 MHP Dark Matter Fruit Punch; (4) Maximum Human Performance LLC MHP Up Your Mass  
15 Fudge Brownie; (5) Maximum Human Performance LLC MHP IsoFast Whey Milkshake  
16 Delicious Chocolate Milkshake; (6) Maximum Human Performance LLC MHP Dark Rage  
17 Grape; (7) Maximum Human Performance LLC MHP Probiotic-SR Triple Chocolate Cookie;  
18 (8) Maximum Human Performance LLC MHP 5D Tropin Orange, (9) Maximum Human  
19 Performance LLC MHP 5D Tropin Fruit Punch; and (10) Maximum Human Performance LLC  
20 MHP Dark Matter Blue Raspberry.

21           **1.2**       ERC and MHP are hereinafter referred to individually as a “Party” or  
22 collectively as the “Parties.”

23           **1.3**       ERC is a California non-profit corporation dedicated to, among other causes,  
24 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
25 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
26 encouraging corporate responsibility.

1           1.4     For purposes of this Consent Judgment, the Parties agree that MHP is a business  
2 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a  
3 “person in the course of business” within the meaning of Proposition 65. MHP manufactures,  
4 distributes and sells the Covered Products.

5           1.5     The Amended Complaint is based on allegations contained in ERC’s Notices of  
6 Violation dated February 13, 2015 and November 5, 2015, that were served on the California  
7 Attorney General, other public enforcers, and MHP (“Notices”). True and correct copies of the  
8 Notices are attached as Exhibit A and are hereby incorporated by reference. More than 60 days  
9 have passed since the Notices were mailed and uploaded to the Attorney General’s website, and  
10 no designated governmental entity has filed a complaint against MHP with regard to the  
11 Covered Products or the alleged violations.

12           1.6     ERC’s Notices and Amended Complaint allege that use of the Covered Products  
13 exposes persons in California to lead without first providing clear and reasonable warnings in  
14 violation of California Health and Safety Code section 25249.6. MHP denies all material  
15 allegations contained in the Notices and Amended Complaint.

16           1.7     The Parties have entered into this Consent Judgment in order to settle,  
17 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
18 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
19 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
20 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
21 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
22 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
23 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
24 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
25 purpose.

1           **1.8**    Except as expressly set forth herein, nothing in this Consent Judgment shall  
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
3 other or future legal proceeding unrelated to these proceedings.

4           **1.9**    The Effective Date of this Consent Judgment is the date on which ERC serves  
5 the Notice of Entry of Judgment by this Court on MHP.

6           **2.    JURISDICTION AND VENUE**

7           For purposes of this Consent Judgment and any further court action that may become  
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
9 jurisdiction over the allegations of violations contained in the Amended Complaint, personal  
10 jurisdiction over MHP as to the acts alleged in the Amended Complaint, that venue is proper in  
11 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
12 final resolution of all claims up through and including the Effective Date which were or could  
13 have been asserted in this action based on the facts alleged in the Notices and Amended  
14 Complaint.

15           **3.    INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

16           **3.1**    Any Covered Products that are manufactured six (6) months after the Effective  
17 Date (the "Compliance Date") that MHP thereafter distributes into the State of California,  
18 offers for sale to a third party for retail sale in California, or directly sells in the State of  
19 California, shall either (1) contain no more than 0.5 micrograms per day of lead per day as  
20 calculated pursuant to Section 3.1.2, excluding allowances pursuant to Section 3.3, and as  
21 validated by the quality control methodology described in Section 3.4; or (2) meet the warning  
22 requirements under Section 3.2.

23           **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
24 of California" shall mean to directly ship a Covered Product into California for sale in  
25 California or to sell a Covered Product to a distributor that MHP knows will sell the Covered  
26 Product in California.

1           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
3 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
4 product (using the largest serving size appearing on the product label), multiplied by servings  
5 of the product per day (using the largest number of servings in a recommended dosage  
6 appearing on the product label), which equals micrograms of lead exposure per day.

7           **3.2 Clear and Reasonable Warnings**

8           If MHP<sup>1</sup> is required to provide a warning pursuant to Section 3.1, the following warning  
9 (the “Warning”) must be utilized:

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

12           Or

13           “WARNING: This product contains chemicals known to the State of California to cause  
14 [cancer and] birth defects or other reproductive harm.”

15  
16 MHP shall use the phrase “cancer and” in the Warning only if the maximum daily dose  
17 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
18 the quality control methodology set forth in Section 3.4 or otherwise exceeds any No Significant  
19 Risk Level (“NSRL”) set forth in California Code of Regulations section 25705.

20           MHP shall provide the Warning via at least one of the following methods: (1) the  
21 Warning shall be securely affixed to or printed upon the container or label of each Covered  
22 Product; (2) for Covered Products sold over MHP’s website, the Warning may appear on MHP’s

23 \_\_\_\_\_  
24           <sup>11</sup> As used in Section 3.2 of this Consent Judgment with respect to the Clear and  
25 Reasonable warnings obligations, the term “MHP” shall include MHP’s—past, present, and  
26 future—officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
27 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label  
customers of MHP), 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.

1 checkout page on its website for California consumers purchasing any Covered Product, or  
2 appear prior to completing checkout on MHP's website when a California delivery address is  
3 indicated for any purchase of any Covered Product ("Checkout Page Warning"); (3) the Warning  
4 may appear on MHP's insert in boxes of Covered Products shipped to California ("Shipping  
5 Insert Warning"); (4) the Warning may appear on MHP's packing list in boxes of Covered  
6 Products shipped to California ("Packing List Warning"); or (5) the Warning may appear on an  
7 insert in the individual packaging material (such as a bottle or a carton) containing the Covered  
8 Product itself ("Packaging Material Insert Warning").

9 For a Checkout Page Warning, a Shipping Insert Warning, or a Packing List Warning,  
10 whenever there are different products listed on the checkout page or contained in the boxes of  
11 Covered Products being shipped, MHP shall identify with an asterisk (or some other identifying  
12 method) each product to which the Warning applies and MHP shall not include a Warning that  
13 does not identify (with an asterisk or some other identifying method) the product to which the  
14 Warning applies.

15 The Warning shall be at least the same size as the largest of any other health or safety  
16 warnings also appearing on its website, on the label or container of MHP's product packaging, or  
17 on MHP's inserts and packing lists, and the word "WARNING" shall be in all capital letters. No  
18 other statements about Proposition 65 or lead may accompany the warning.

19 MHP must display the above warnings with such conspicuousness, as compared with other  
20 words, statements, or design of the label or container, website, or insert or packing list, as  
21 applicable, to render the warning likely to be read and understood by an ordinary individual under  
22 customary conditions of purchase or use of the product.

23 If MHP provides a Shipping Insert Warning, MHP shall provide one insert Warning for  
24 each Covered Product in a box or one insert warning that lists all of the Covered Products in the  
25 box. This insert Warning will be a minimum of 5 inches x 7 inches. If MHP provides a Packing  
26 List Warning, the packing list shall identify each Covered Product with an asterisk, and the  
27 Warning must be present on the front of the packing list. If MHP provides a Shipping Insert

1 Warning or a Packing List Warning, the Covered Products may be returned by the consumer for a  
2 refund within 30 days of the invoice date if the consumer references the Warning as a reason for  
3 the return. If MHP provides a Shipping Insert Warning, the Warning must be present on only one  
4 side of the insert.

5 **3.3 Reformulated Covered Products**

6 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when  
7 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,  
8 contains no more than 0.5 micrograms of lead per day as determined by the quality control  
9 methodology described in Section 3.4, excluding amounts of naturally occurring lead in the  
10 ingredients listed in the table below.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Chocolate	1.0 micrograms/gram

23  
24 If at any time after the Compliance Date, ERC tests a Covered Product and the test results  
25 indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, MHP  
26 agree to confidentially supply to ERC within 30 days a list of ingredients, including the  
27 percentage of each ingredient ("Ingredient List"), of that particular Covered Product so that

1 ERC may be able to calculate the daily exposure based on the allowances contained in the table  
2 above.

3 In the event that a dispute arises with respect to compliance with the terms of this  
4 Consent Judgment as to any contribution from naturally occurring lead levels under the  
5 Section, the Parties shall employ good faith efforts to seek entry of a protective order that limits  
6 public access to and disclosure of the Ingredient List provided. Should a dispute arise, the  
7 Parties shall first meet and confer in an effort to fully resolve any dispute.

8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** MHP shall not "Distribute into California or sell to consumers in  
10 California any Covered Product without complying with the warning requirements specified in  
11 Section 3.2 unless test results from three randomly selected samples of the Covered Product, in  
12 the form intended for sale to the end-user, demonstrate that no warning is required for the  
13 Covered Product.

14 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the highest  
15 lead detection result of the three (3) randomly selected samples of the Covered Products will be  
16 controlling.

17 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
18 laboratory method that complies with the performance and quality control factors appropriate  
19 for the method used, including limit of detection, qualification, accuracy, and precision that  
20 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
21 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
22 method subsequently agreed to in writing by the Parties.

23 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
24 independent third party laboratory certified by the California Environmental Laboratory  
25 Accreditation Program or an independent third-party laboratory that is registered with the  
26 United States Food & Drug Administration.

27 **3.4.5** Nothing in this Consent Judgment shall limit MHP's ability to conduct,



1 or require that others conduct, additional testing of the Covered Products, including the raw  
2 materials used in their manufacture.

3           **3.4.6** MHP shall retain all test results and related documentation for a period  
4 of five years from the date of each test.

5           **3.5 Name Changes.** If MHP changes only the name of a Covered Product, MHP  
6 shall notify ERC in writing of the name change, and the product with a new name will still  
7 qualify as a Covered Product, subject to the Consent Judgment.

8           **4. SETTLEMENT PAYMENT**

9           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
10 penalties, attorney's fees, and costs, MHP shall make a total payment of \$157,500 ("Total  
11 Settlement Amount") to ERC within 5 days of the Effective Date. MHP shall make this  
12 payment by wire transfer to ERC's escrow account, for which ERC will give MHP the  
13 necessary account information. The Total Settlement Amount shall be apportioned as follows:

14           **4.2** \$63,000.00 shall be considered a civil penalty pursuant to California Health and  
15 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$47,250.00) of the civil penalty to the  
16 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
17 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
18 Code §25249.12(c). ERC will retain the remaining 25% (\$15,750.00) of the civil penalty.

19           **4.3** \$7,027.43 shall be distributed to ERC as reimbursement to ERC for reasonable  
20 costs incurred in bringing this action.

21           **4.4** \$47,622.74 shall be distributed to ERC in lieu of further civil penalties, for the  
22 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
23 includes work, analyzing, researching and testing consumer products that may contain  
24 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
25 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
26 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
27

1 donation of \$2,350.00 to the Natural Resource Defense Council to address reducing toxic  
2 chemical exposures in California.

3       **4.5**     \$19,106.91 shall be distributed to Richard M. Franco as reimbursement of  
4 ERC's attorney's fees, while \$20,742.92 shall be distributed to ERC for its in-house legal fees.

5       **5.     MODIFICATION OF CONSENT JUDGMENT**

6       **5.1**     This Consent Judgment may be modified only (i) by written stipulation of the  
7 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
8 judgment.

9       **5.2**     If MHP seeks to modify this Consent Judgment under Section 5.1, then MHP  
10 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and  
11 confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
12 written notice to MHP within thirty days of receiving the Notice of Intent. If ERC notifies  
13 MHP in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and  
14 confer in good faith as required in this Section. The Parties shall meet in person or via  
15 telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within  
16 thirty days of such meeting, if ERC disputes the proposed modification, ERC shall provide to  
17 MHP a written basis for its position. The Parties shall continue to meet and confer for an  
18 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become  
19 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer  
20 period.

21       **5.3**     In the event that MHP initiates or otherwise requests a modification under  
22 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
23 Consent Judgment, MHP shall reimburse ERC its costs and reasonable attorney's fees for the  
24 time spent in the meet-and-confer process and filing and arguing the motion or application.

25       **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
26 application in support of a modification of the Consent Judgment, then either Party may seek  
27 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs

1 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
2 means a party who is successful in obtaining relief more favorable to it than the relief that the  
3 other party was amenable to providing during the Parties' good faith attempt to resolve the  
4 dispute that is the subject of the modification.

5 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
6 **JUDGMENT**

7 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
8 this Consent Judgment.

9 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
10 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
11 inform MHP in a reasonably prompt manner of its test results, including information sufficient  
12 to permit MHP to identify the Covered Products at issue. MHP shall, within thirty days  
13 following such notice, provide ERC with testing information, from an independent third-party  
14 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating MHP's  
15 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve  
16 the matter prior to ERC taking any further legal action.

17 **7. APPLICATION OF CONSENT JUDGMENT**

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

24 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

25 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
26 behalf of itself and in the public interest, and MHP and its respective officers, directors,  
27 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,

1 franchisees, licensees, customers (not including private label customers of MHP), distributors,  
2 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
3 of any Covered Product, and the predecessors, successors and assigns of any of them  
4 (collectively, "Released Parties"). ERC hereby fully releases and discharges the Released  
5 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
6 penalties, fees, costs and expenses asserted, or that could have been asserted from the handling,  
7 use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or  
8 its implementing regulations arising from the failure to provide Proposition 65 warnings on the  
9 Covered Products regarding lead up to and including the Effective Date.

10 **8.2** ERC on its own behalf only, on one hand, and MHP on its own behalf only, on  
11 the other, further waive and release any and all claims they may have against each other for all  
12 actions or statements made or undertaken in the course of seeking or opposing enforcement of  
13 Proposition 65 in connection with the Notices or Amended Complaint up through and including  
14 the Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
15 right to seek to enforce the terms of this Consent Judgment.

16 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
17 alleged in the Notices or the Amended Complaint and relating to the Covered Products will  
18 develop or be discovered. ERC on behalf of itself only, on one hand, and MHP, on the other  
19 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all  
20 such claims up through the Effective Date, including all rights of action therefore. ERC and  
21 MHP acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
22 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
23 unknown claims. California Civil Code section 1542 reads as follows:

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

1 ERC on behalf of itself only, on the one hand, and MHP, on the other hand, acknowledge and  
2 understand the significance and consequences of this specific waiver of California Civil Code  
3 section 1542.

4       **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
6 in the Covered Products as set forth in the Notices and the Amended Complaint.

7       **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
8 environmental exposures arising under Proposition 65, nor shall it apply to any of MHP's  
9 products other than the Covered Products.

10       **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13       **10. GOVERNING LAW**

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

16       **11. PROVISION OF NOTICE**

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

20       **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

21 Chris Heptinstall, Executive Director, Environmental Research Center  
22 3111 Camino Del Rio North, Suite 400  
23 San Diego, CA 92108  
24 Tel: (619) 500-3090  
25 Email: chris\_erc501c3@yahoo.com

26       With a copy to:

27 Richard M. Franco  
28 Law Office of Richard M. Franco  
29 6500 Estates Drive  
30 Oakland, CA 94611  
31 Telephone: (510) 684-1022  
32 Email: rick@rfrancolaw.com

1  
2 **MAXIMUM HUMAN PERFORMANCE, LLC**

3 Daniel B. Chammas, Esq.  
4 VENABLE LLP  
5 2049 Century Park East, Suite 2100  
6 Los Angeles, CA 90067

7 With a copy to:

8 Anthony J. Cortez  
9 Greg Sperla  
10 Greenberg Traurig, LLP  
11 1201 K Street, Suite 1100  
12 Sacramento, CA 94814  
13 Telephone: (916) 442-1111  
14 Email: cortezan@gtlaw.com  
15 sperlag@gtlaw.com

16  
17 **12. COURT APPROVAL**

18 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
19 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
20 Consent Judgment.

21 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
22 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
23 prior to the hearing on the motion.

24 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
25 void and have no force or effect.

26 **13. EXECUTION AND COUNTERPARTS**

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

30 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for each

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

#### 8 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

9 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
10 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to  
11 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of  
12 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is  
13 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As  
14 used in the preceding sentence, the term "prevailing party" means a party who is successful in  
15 obtaining relief more favorable to it than the relief that the other party was amenable to providing  
16 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement  
17 action.

#### 18 **16. ENTIRE AGREEMENT, AUTHORIZATION**

19 **16.1** This Consent Judgment contains the sole and entire agreement and  
20 understanding of the Parties with respect to the entire subject matter herein, and any and all  
21 prior discussions, negotiations, commitments and understandings related hereto. No  
22 representations, oral or otherwise, express or implied, other than those contained herein have  
23 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
24 herein, shall be deemed to exist or to bind any Party.

25 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
26 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
27 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

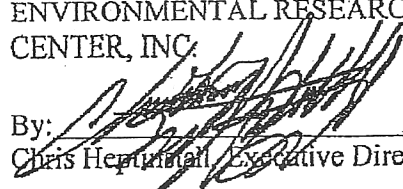
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13 IT IS SO STIPULATED:

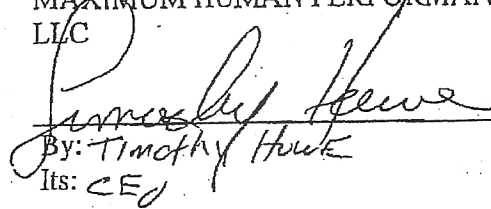
14 Dated: 5/27/, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Hentz, Executive Director

16 Dated: 6/1/, 2016

MAXIMUM HUMAN PERFORMANCE,  
LLC

By:   
Its: CEO

21 APPROVED AS TO FORM:  
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Dated: May 27, 2016

LAW OFFICE OF RICHARD M. FRANCO

By: [Signature]  
Richard M. Franco  
Attorney for Plaintiff Environmental  
Research Center, Inc.

Dated: May 27, 2016

GREENBERG TRAURIG, LLLP

By: [Signature]  
~~James R. Prochnow~~ Anthony J. Coitez  
Attorneys for Defendant Maximum  
Human Performance, LLC

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: 8/9, 2016

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

# EXHIBIT A

**LAW OFFICE OF RICHARD M. FRANCO**

**6500 ESTATES DRIVE  
OAKLAND, CA 94611  
510.684.1022  
RICK@RFANCOLAW.COM**

**VIA CERTIFIED MAIL**

Current CEO or President  
Maximum Human Performance, LLC  
21 Dwight Place  
Fairfield, NJ 07004

Current CEO or President  
Maximum Human Performance, LLC  
165 Clinton Road  
West Caldwell, NJ 07006

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
West Trenton, NJ 08628

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
Ewing, NJ 08628

**VIA PRIORITY MAIL**

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

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

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Maximum Human Performance, LLC**

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

- **Maximum Human Performance LLC MHP Up Your Mass Vanilla - Lead**
- **Maximum Human Performance LLC MHP A-Bomb - Lead**
- **Maximum Human Performance LLC MHP Dark Matter Fruit Punch - Lead**
- **Maximum Human Performance LLC MHP Up Your Mass Fudge Brownie - Lead**
- **Maximum Human Performance LLC MHP IsoFast Whey Milkshake Delicious Chocolate Milkshake - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since February 13, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to

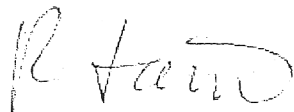
February 13, 2015

Page 3

the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Maximum Human Performance, LLC and its Registered Agent for Service of Process only)

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

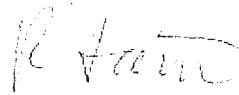
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Maximum Human Performance, LLC**

I, Rick Franco, declare:

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

Dated: February 13, 2015



---

Rick Franco

**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 February 13, 2015, 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 the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Maximum Human Performance, LLC  
21 Dwight Place  
Fairfield, NJ 07004

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
West Trenton, NJ 08628

Current CEO or President  
Maximum Human Performance, LLC  
165 Clinton Road  
West Caldwell, NJ 07006

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
Ewing, NJ 08628

On February 13, 2015, I electronically served 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)** 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 February 13, 2015, 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 Priority Mail.

Executed on February 13, 2015, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Tiffany Capehart

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

February 13, 2015

Page 6

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 4<sup>th</sup> 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  
Post Office Box 720  
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, 2<sup>nd</sup> 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 Francisco, 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., 3<sup>rd</sup> 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 12<sup>th</sup> 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 2<sup>nd</sup> 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,  
16<sup>th</sup> 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.<sup>1</sup> 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

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

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](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 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 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<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering 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.

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

### *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of 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](mailto: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.

# LAW OFFICE OF RICHARD M. FRANCO

6500 ESTATES DRIVE  
OAKLAND, CA 94611  
510.684.1022  
RICK@RFRANCOLAW.COM

## VIA CERTIFIED MAIL

Current CEO or President  
Maximum Human Performance, LLC  
21 Dwight Place  
Fairfield, NJ 07004

Current CEO or President  
Maximum Human Performance, LLC  
165 Clinton Road  
West Caldwell, NJ 07006

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
West Trenton, NJ 08628

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
Ewing, NJ 08628

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
2711 Centerville Road, Suite 400  
Wilmington, De 19808

## VIA ELECTRONIC MAIL

Yolo County District Attorney  
301 2<sup>nd</sup> Street  
Woodland, CA 95695  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

## VIA PRIORITY MAIL

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

## VIA ONLINE SUBMISSION

Office of the California Attorney General

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

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Maximum Human Performance, LLC**

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

1. **Maximum Human Performance LLC MHP Dark Rage Grape - Lead**
2. **Maximum Human Performance LLC MHP Probolic-SR Triple Chocolate Cookie - Lead**
3. **Maximum Human Performance LLC MHP 5D Tropin Orange - Lead**
4. **Maximum Human Performance LLC MHP 5D Tropin Fruit Punch - Lead**
5. **Maximum Human Performance LLC MHP Dark Matter Blue Raspberry - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since November 5, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

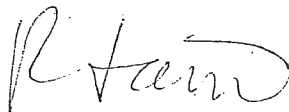
November 5, 2015

Page 3

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

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Maximum Human Performance, LLC and its Registered Agents for Service of Process only)

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

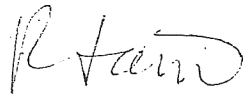
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Maximum Human Performance, LLC**

I, Rick Franco, declare:

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

Dated: November 5, 2015



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Rick Franco



**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 November 5, 2015, 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 the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Maximum Human Performance, LLC  
21 Dwight Place  
Fairfield, NJ 07004

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
West Trenton, NJ 08628

Current CEO or President  
Maximum Human Performance, LLC  
165 Clinton Road  
West Caldwell, NJ 07006

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
830 Bear Tavern Road  
Ewing, NJ 08628

Corporation Service Company  
(Maximum Human Performance, LLC's  
Registered Agent for Service of Process)  
2711 Centerville Road, Suite 400  
Wilmington, De 19808

On November 5, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

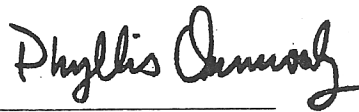
On November 5, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
November 5, 2015  
Page 6

Yolo County District Attorney  
301 2<sup>nd</sup> Street  
Woodland, CA 95695  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

On November 5, 2015, 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 Priority Mail.

Executed on November 5, 2015, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

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

November 5, 2015

Page 7

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 4<sup>th</sup> 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 Francisco, 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, 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. Please refer 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.

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

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and

reasonable.” This means that the warning must: (1) clearly say 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 Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

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

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

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

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

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

#### ***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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

The notice is reproduced here:

Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**



Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.  
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108  
Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

\_\_\_\_\_  
Signature of alleged violator or authorized representative Date

\_\_\_\_\_  
Name and title of signatory

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

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

Revised: May 2014

\_\_\_\_\_

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

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

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.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A