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10 ENVIRONMENTAL RESEARCH CENTER, INC.

FILED
ALAMEDA COUNTY

OCT 25 2016

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

7 Peter McGaw SBN 104691
8 Archer Norris
9 2033 North Main Street, Suite 800
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11 Attorney for Defendant
12 TOTAL LIFE CHANGES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

**TOTAL LIFE CHANGES, LLC and
DOES 1-100**

Defendants.

CASE NO. RG16826366

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 8, 2016

Trial Date: None set

1. INTRODUCTION

1.1 On August 8, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against Total Life Changes, LLC (“TLC”) and Does 1-100. In this action,
3 ERC alleges that a number of products manufactured, distributed or sold by TLC contain lead, a
4 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
5 consumers to this chemical at a level requiring a Proposition 65 warning. These products
6 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
7 Products”) are: (1) AIM Food Manufacturing Total Life Changes LLC iaso Café Latin Style, (2)
8 Total Life Changes LLC iaso Café Delgada, (3) Total Life Changes LLC iaso Techui, and (4)
9 Total Life Changes LLC iaso NRG.

10 **1.2** ERC and TLC are hereinafter referred to individually as a “Party” or collectively
11 as the “Parties.”

12 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
13 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
14 and toxic chemicals, facilitating a safe environment for consumers and employees, and
15 encouraging corporate responsibility.

16 **1.4** For purposes of this Consent Judgment, the Parties agree that TLC is a business
17 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a
18 “person in the course of business” within the meaning of Proposition 65. TLC distributes and sells
19 the Covered Products.

20 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
21 dated December 16, 2015, that was served on the California Attorney General, other public
22 enforcers, and TLC (“Notice”). A true and correct copy of the Notice is attached as Exhibit A
23 and is hereby incorporated by reference. More than 60 days have passed since the Notice was
24 mailed and uploaded to the Attorney General’s website, and no designated governmental entity
25 has filed a complaint against TLC with regard to the Covered Products or the alleged violations.

26 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
27 persons in California to lead without first providing clear and reasonable warnings in violation
28 of California Health and Safety Code section 25249.6. TLC denies all material allegations

1 contained in the Notice and Complaint.

2 **1.7** The Parties have entered into this Consent Judgment in order to settle,
3 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
4 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
5 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
6 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
7 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
8 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
9 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
10 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
11 purpose.

12 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
14 other or future legal proceeding unrelated to these proceedings.

15 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
16 a Judgment by this Court.

17 **1.10** Without admission that any action on its part was necessary or warranted or that
18 any violation of Proposition 65 occurred or would have occurred, TLC has developed and is
19 implementing various procedures designed to assure that Covered Products intended for
20 distribution or sale in California comply with Proposition 65, including, but not limited to,
21 changing suppliers of some Covered Products or their components, regular testing of Covered
22 Products for lead, adjusting or revising the labeling or suggested usage of some Covered
23 Products and/or discontinuing the sale of some Covered Products.

24
25 **2. JURISDICTION AND VENUE**

26 For purposes of this Consent Judgment and any further court action that may become
27 necessary to enforce this Consent Judgment, and for those purposes only, the Parties stipulate that
28

1 this Court has subject matter jurisdiction over the allegations of violations contained in the
2 Complaint, personal jurisdiction over TLC as to the acts alleged in the Complaint, that venue is
3 proper in Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a
4 full and final resolution of all claims up through and including the Effective Date which were or
5 could have been asserted in this action based on the facts alleged in the Notice and Complaint.

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

7 **3.1** Beginning on the Effective Date, TLC shall not “Distribute into the State of
8 California”, or directly sell in the State of California, any Covered Product which exposes a
9 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day when
10 the maximum suggested dose is taken as directed on the Covered Product’s label, unless each
11 such unit of the Covered Product meets the warning requirements under Section 3.2.

12 **3.1.1** As used in this Consent Judgment, the term “Distribute into the State of
13 California” shall mean to directly ship a Covered Product into California for sale in California
14 or to sell a Covered Product to a distributor that TLC knows will sell the Covered Product in
15 California. As used in the preceding sentence, “knows” means the level of knowledge required
16 by Health and Safety Code section 25249.6.

17 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
18 Level” shall be measured in micrograms, and shall be calculated using the following formula:
19 micrograms of lead per gram of product, multiplied by grams of product per serving of the
20 product (using the largest serving size appearing on the product label), multiplied by servings
21 of the product per day (using the largest number of servings in a recommended dosage
22 appearing on the product label), which equals micrograms of lead exposure per day.

23 **3.2 Clear and Reasonable Warnings**

24 If TLC is required to provide a warning pursuant to Section 3.1, the following warning
25 must be utilized (“Warning”):

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

28 The phrase “cancer and” must be included in the Warning only if the “Daily Lead Exposure

1 Level” causes an exposure to more than 15 micrograms of lead according to the quality control
2 methodology set forth in Section 3.4. Inclusion of the term “lead” is optional.

3 The Warning shall be prominent and displayed securely on either the cap, the unit
4 packaging, or by a sticker securely affixed to or printed upon the container or label of each
5 Covered Product.

6 The Warning shall be at least the same size as the largest of any other health or safety
7 warnings on the label or container of TLC’s product packaging and the word “**WARNING**” shall
8 be in all capital letters and in bold print. No statements contradicting or conflicting with the
9 Warning shall accompany the Warning.

10 TLC must display the above Warning with such conspicuousness, as compared with other
11 words, statements, or design of the label or container so as to render the Warning likely to be read
12 and understood by an ordinary individual under customary conditions of purchase or use of the
13 product.

14 **3.3 Reformulated Covered Products**

15 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
16 the maximum suggested dose is taken as directed on the Reformulated Covered Product’s label,
17 contains no more than 0.5 micrograms of lead per day as determined by the quality control
18 methodology described in Section 3.4.

19 **3.4 Testing and Quality Control Methodology**

20 **3.4.1** TLC shall arrange, for at least five (5) consecutive years following the
21 Effective Date, for the lead testing of samples from five (5) randomly-selected separate lots
22 each year (or from every lot manufactured in that year, if fewer than five) for each Covered
23 Product to confirm whether the “Daily Lead Exposure Level” is more or less than 0.5
24 micrograms. TLC shall provide ERC with any test results pursuant to Section 3.4.7, and shall
25 include the lot identification numbers of the lots tested. TLC shall arrange for the testing of
26 samples representative of the Covered Products intended for the end-user to be distributed or
27 sold to California consumers. This testing requirement does not apply to any of the Covered
28 Products for which TLC has provided the Warning specified in Section 3.2.

1 **3.4.2** If TLC is successful with reformulation for any of the Covered Products
2 which reduces the “Daily Lead Exposure Level” to 0.5 micrograms, or if, for any reason, the
3 “Daily Lead Exposure Level” for a Covered Product is less than 0.5 micrograms, the Parties
4 agree that the Covered Products may be offered for sale in California without the warning
5 stated in Section 3.2. If TLC is successful with reformulation on any of the Covered Products,
6 or if, for any other reason, the “Daily Lead Exposure Level” for any Covered Product is less
7 than 0.5 micrograms, TLC shall notify ERC and provide any test results for the Covered
8 Products that document the “Daily Lead Exposure Level” for the Covered Product at least 10
9 days prior to TLC Distributing into the State of California or directly selling in the State of
10 California, any covered products without the warning set forth in Section 3.2.

11 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
12 laboratory method that complies with the performance and quality control factors appropriate
13 for the method used, including limit of detection, qualification, accuracy, and precision that
14 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
15 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
16 method subsequently agreed to in writing by the Parties and approved by the Court though
17 entry of a modified consent judgment.

18 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
19 independent third party laboratory accredited to perform the particular method of detection and
20 analysis in question by the California Environmental Laboratory Accreditation Program (ELAP),
21 the National Environmental Laboratory Accreditation Program (NELAP), a similar nationally
22 recognized accrediting organization, or an independent third-party laboratory that is registered
23 with the United States Food & Drug Administration or the Environmental Protection Agency.
24 The method of selecting samples for testing must comply with the regulations of the Food &
25 Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal
26 Regulations, including Section 111.80(c).

27 **3.4.5** Nothing in this Consent Judgment shall limit TLC’s ability to conduct, or
28 require that others conduct, additional testing of the Covered Products, including the raw

1 materials used in their manufacture.

2 **3.4.6** Pursuant to Sections 3.4.1 and 3.4.2, TLC shall retain copies of data
3 from tests performed for the purposes of Sections 3.4.1 and 3.4.2 from the date testing
4 commenced and shall provide all test data to ERC within fifteen (15) days of ERC requesting
5 such data as set forth above. The requirement to provide any test data to ERC shall cease after
6 five (5) years from the Effective Date.

7 **4. SETTLEMENT PAYMENT**

8 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
9 penalties, attorney's fees, and costs, TLC shall make a total payment of Ninety-seven thousand,
10 five hundred dollars (\$97,500.00) ("Total Settlement Amount") to ERC within 5 days of the
11 Effective Date. TLC shall make this payment by wire transfer to ERC's escrow account, for
12 which ERC will give TLC the necessary account information. The Total Settlement Amount
13 shall be apportioned as follows:

14 **4.2** \$33,232.00 shall be considered a civil penalty pursuant to California Health and
15 Safety Code §25249.7(b)(1). Upon expiration of any comment period allowed by regulation to
16 the California Attorney General, and except as provided in Section 11 below, ERC shall remit
17 75% (\$24,924.00) of the civil penalty to the Office of Environmental Health Hazard
18 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund
19 in accordance with California Health and Safety Code §25249.12(c). ERC will retain the
20 remaining 25% (\$8,308.00) of the civil penalty.

21 **4.3** \$1,686.60 shall be distributed to ERC as reimbursement to ERC for reasonable
22 costs incurred in bringing this action.

23 **4.4** \$33,233.39 shall be distributed to ERC in lieu of further civil penalties, for the
24 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
25 includes work, analyzing, researching and testing consumer products that may contain
26 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
27 the subject matter of the current action; (2) the continued monitoring of past consent judgments
28 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a

1 donation of \$1,660.00 to the Center For Environmental Health to address reducing toxic
2 chemical exposures in California.

3 **4.5** \$13,480.00 shall be distributed to Michael Freund as reimbursement of ERC's
4 attorney's fees, \$770.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
5 attorney's fees, while \$15,098.01 shall be distributed to ERC for its in-house legal fees.

6 **4.6** In the event that TLC fails to remit the Total Settlement Payment owed under
7 Section 4 of this Consent Judgment on or before the Due Date, TLC shall be deemed to be in
8 material breach of its obligations under this Consent Judgment. ERC shall provide written
9 notice of the delinquency to TLC via electronic mail. If TLC fails to deliver the Total
10 Settlement Payment within five (5) days from the written notice, the Total Settlement Payment
11 shall become immediately due and payable and shall accrue interest at the statutory judgment
12 interest rate provided in the Code of Civil Procedure section 685.010. Additionally, TLC
13 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment
14 due under this Consent Judgment.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
17 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
18 modified consent judgment.

19 **5.2** If TLC seeks to modify this Consent Judgment under Section 5.1, then TLC
20 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and
21 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
22 written notice to TLC within thirty days of receiving the Notice of Intent. If ERC notifies TLC
23 in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in
24 good faith as required in this Section. The Parties shall meet in person or via telephone within
25 thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty days of
26 such meeting, if ERC disputes the proposed modification, ERC shall provide to TLC a written
27 basis for its position. The Parties shall continue to meet and confer for an additional thirty (30)
28

1 days in an effort to resolve any remaining disputes. Should it become necessary, the Parties
2 may agree in writing to different deadlines for the meet-and-confer period.

3 **5.3** In the event that TLC initiates or otherwise requests a modification under
4 Section 5.1, and the meet and confer process leads to a joint motion or application of the
5 Consent Judgment, TLC shall reimburse ERC its costs and reasonable attorney's fees for the
6 time spent in the meet-and-confer process and filing and arguing the motion or application.

7 **5.4** Where the meet-and-confer process does not lead to a joint motion or
8 application in support of a modification of the Consent Judgment, then either Party may seek
9 judicial relief on its own.

10
11 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
12 **JUDGMENT**

13 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
14 this Consent Judgment.

15 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
16 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
17 inform TLC in a reasonably prompt manner, including providing copies of its test results to
18 TLC, and including information sufficient to permit TLC to identify the Covered Products at
19 issue. TLC shall, within thirty days following such notice, provide ERC with testing
20 information, from an independent third-party laboratory meeting the requirements of Sections
21 3.4.4 and 3.4.5, demonstrating TLC's compliance with the Consent Judgment, if warranted.
22 The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
26 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
27 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
28 application to Covered Products which are distributed or sold exclusively outside the State of

1 California and which are not used by California consumers.

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

3 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
4 on behalf of itself and in the public interest, and TLC and its respective officers, directors,
5 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
6 franchisees, licensees, customers (not including private label customers of TLC), distributors,
7 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
8 of any Covered Product, and the predecessors, successors and assigns of any of them
9 (collectively, "Released Parties"). ERC hereby fully releases and discharges the Released
10 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
11 penalties, fees, costs and expenses asserted, or that could have been asserted from the handling,
12 use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or
13 its implementing regulations arising from the failure to provide Proposition 65 warnings on the
14 Covered Products regarding lead up to and including the Effective Date.

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

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

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

6 ERC on behalf of itself only, on the one hand, and TLC, on the other hand, acknowledge and
7 understand the significance and consequences of this specific waiver of California Civil Code
8 section 1542.

9 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
10 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
11 to lead in the Covered Products.

12 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
13 environmental exposures arising under Proposition 65, nor shall it apply to any of TLC's
14 products other than the Covered Products.

15 **8.6** Nothing herein shall be construed as diminishing TLC's continuing obligations to
16 comply with Proposition 65. To the extent the failure to comply with this Consent Judgment
17 constitutes a violation of Proposition 65 or other laws, ERC may seek whatever fines, costs,
18 penalties or remedies as are provided by law for failure to comply with Proposition 65 or other
19 laws.

20 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

23 **10. GOVERNING LAW**

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

26 **11. PROVISION OF NOTICE**

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

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

2 Chris Heptinstall, Executive Director, Environmental Research Center
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Tel: (619) 500-3090
6 Email: chris_erc501c3@yahoo.com

7 With a copy to:

8 Michael Freund SBN 99687
9 Ryan Hoffman SBN 283297
10 Michael Freund & Associates
11 1919 Addison Street, Suite 105
12 Berkeley, CA 94704
13 Telephone: (510) 540-1992
14 Facsimile: (510) 540-5543

15 **FOR TOTAL LIFE CHANGES, LLC**

16 John Licari
17 Chief Operating Officer
18 Total Life Changes
19 6094 Corporate Drive
20 Fair Haven, MI 48023
21 Tel: (888) 873-1898
22 john@totallifechanges.com

23 With a copy to:

24 Peter McGaw
25 Archer Norris
26 2033 North Main Street, Suite 800
27 Walnut Creek, CA 94596-3759
28 Telephone: (925) 930-6600
Facsimile: (925) 930-6620

And a copy to:

Benjamin J. Aloia, Esq.
Jeffrey M. Candela, Esq.
Aloia and Associates
48 South Main Street, Suite 3,
Mount Clemens, MI 48043
Phone: (586) 783-3300
Fax: (586) 783-3313
aloia@aloiaandassociates.com
candela@aloiaandassociates.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

23 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

24 If a dispute arises with respect to either Party's compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
26 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
27 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

1 **16. ENFORCEMENT**

2 ERC may, by motion or order to show cause before the Superior Court of Alameda
3 County, enforce the terms and conditions contained in this Consent Judgment. In any action
4 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
5 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
6 To the extent the failure to comply with the Consent Judgment constitutes a violation of
7 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
8 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
9 law for failure to comply with Proposition 65 or other laws.

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

11 **17.1** This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter herein, and any and all
13 prior discussions, negotiations, commitments and understandings related hereto. No
14 representations, oral or otherwise, express or implied, other than those contained herein have
15 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
16 herein, shall be deemed to exist or to bind any Party.

17 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
19 explicitly provided herein, each Party shall bear its own fees and costs.

20 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
21 **CONSENT JUDGMENT**

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

25 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
26 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has

27 /// /// ///

1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4
5 **IT IS SO STIPULATED:**

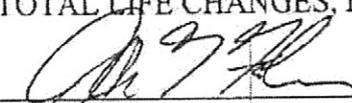
6 ENVIRONMENTAL RESEARCH
7 CENTER, INC.

8 Dated: _____, 2016

9 By: _____
10 Chris Heptinstall, Executive Director

11 TOTAL LIFE CHANGES, LLC

12 Dated: AUG. 12, 2016.

13 
14 By: JACK T. FALLON
15 Its: CEO

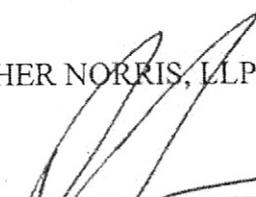
16 **APPROVED AS TO FORM:**

17 MICHAEL FREUND & ASSOCIATES

18 Dated: 8/17/, 2016

19 By: MF
20 Michael Freund
21 Ryan Hoffman
22 Attorneys for Plaintiff Environmental
23 Research Center, Inc.

24 Dated: August 16,, 2016

25 ARCHER NORRIS, LLP
26 By: 
27 Peter McGaw
28 Attorney for Defendant Total Life
Changes, LLC

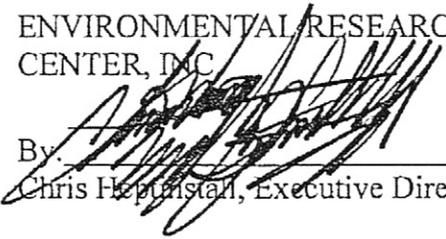
1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4
5 **IT IS SO STIPULATED:**

6
7 Dated: 8/17/, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC

By: 
Chris Heppristal, Executive Director

10 TOTAL LIFE CHANGES, LLC

11 Dated: _____, 2016

By: _____
Its: _____

15 **APPROVED AS TO FORM:**

16
17
18 Dated: _____, 2016

MICHAEL FREUND & ASSOCIATES

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

22 Dated: _____, 2016

ARCHER NORRIS, LLP

By: _____
Peter McGaw
Attorney for Defendant Total Life
Changes, LLC

1 ORDER AND JUDGMENT

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5 Dated: 10/25, 2016

6 
7 _____
8 Judge of the Superior Court

9 Robert D. McGuinness

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EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

December 16, 2015

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Total Life Changes, LLC

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

1. AIM Food Manufacturing Total Life Changes LLC iaso Café Latin Style - Lead
2. Total Life Changes LLC iaso Café Delgada - Lead
3. Total Life Changes LLC iaso Techui - Lead
4. Total Life Changes LLC iaso NRG - Lead

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this

chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 16, 2012, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Total Life Changes, 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 Total Life Changes, LLC**

I, Michael Freund, declare:

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

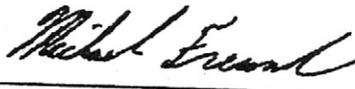
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: December 16, 2015



Michael Freund

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On December 16, 2015, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Total Life Changes, LLC
9453 Marine City Highway
Ira, MI 48023

Current President or CEO
Total Life Changes, LLC
7940 Cherry Avenue, Suite 201
Fontana, CA 92336

Current President or CEO
Total Life Changes, LLC
6094 Corporate Drive
Ira, MI 48023

Jack Fallon
(Total Life Changes, LLC's Registered
Agent for Service of Process)
9453 Marine City Highway
Ira, MI 48023

On December 16, 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 December 16, 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 parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

Gary Lieberstein, District Attorney
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Michelle Latimer, Program Coordinator
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Paul E. Zellerbach, District Attorney
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

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

December 16, 2015

Page 5

Gregory Alker, Assistant District Attorney
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Yen Dang, Supervising Deputy District Attorney
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

On December 16, 2015, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on December 16, 2015, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

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

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

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

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

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

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

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

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

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

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

District Attorney, 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, 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, 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 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 Cr., 3rd Floor
Redwood City, CA 94063

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

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

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

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

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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

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

reasonable.” This means that the warning must: (1) clearly 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 contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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: December 16, 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: December 16, 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.

Revised: May 2014

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

² 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).

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