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18 Attorneys for Defendant
19 NATURAL FACTORS NUTRITIONAL
20 PRODUCTS INC.

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF ALAMEDA**

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

26 Plaintiff,

27 v.

28 NATURAL FACTORS NUTRITIONAL
PRODUCTS INC., a Washington corporation,

Defendants.

Case No. RG16833396

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September __, 2016

Trial Date: None set

**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 16 2016

CLERK OF THE SUPERIOR COURT

By T. Lopez Deputy

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1 c) Natural Factors 7 Day Total Nutritional Cleansing Program Colon Support
2 & Liver Support

3 8) Natural Factors WellBetX PGX Weight Loss Shake Chocolate

4 9) Natural Factors WellBetX PGX Weight Management Shake French Vanilla

5 10) Natural Factors SlimStyles Weight Loss Drink Mix with PGX Rich Mocha

6 11) Natural Factors SlimStyles Weight Loss Drink Mix with PGX Very
7 Strawberry

8 12) Natural Factors Detoxitech

9 13) Natural Factors PGX Satisfast Whey Protein Energy Drink Mix Very Vanilla

10 14) Natural Factors PGX Satisfast Whey Protein Energy Drink Mix Double
11 Chocolate

12 15) InovoBiologic Inc. PGX Satisfast Vegan Protein Very Strawberry

13 16) InovoBiologic Inc. PGX Satisfast Organic Vegan Protein Bar Very Berry
14 Dark Chocolate

15 17) InovoBiologic Inc. PGX Satisfast Organic Vegan Protein Bar Dark Chocolate
16 Coconut

17 18) InovoBiologic Inc. PGX Satisfast Organic Vegan Protein Bar Dark Chocolate
18 Peanut Butter.

19 All sizes, packaging and forms of each Covered Product are subject to this Consent Judgment.

20 **1.2** ERC and NATURAL FACTORS are hereinafter referred to individually as a
21 "Party" or collectively as the "Parties."

22 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
23 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
24 and toxic chemicals, facilitating a safe environment for consumers and employees, and
25 encouraging corporate responsibility.

26 **1.4** NATURAL FACTORS is a Washington Corporation which has employed ten or
27 more persons at times relevant to this action, and qualifies as a "person in the course of business"

within the meaning of Proposition 65. NATURAL FACTORS either manufactures, and/or distributes and/or sells the Covered Products.

1.5 The Complaint is based on allegations contained in ERC's Notice of Violation dated January 13, 2016, that was served on the California Attorney General, other public enforcers, and NATURAL FACTORS ("Notice"). A true and correct copy of the Notice is attached as **Exhibit A** and is hereby incorporated by reference. More than 60 days have passed since the Notice was served on the Attorney General, public enforcers, and NATURAL FACTORS and no designated governmental entity has filed a complaint against NATURAL FACTORS with regard to the Covered Products or the alleged violations.

1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes persons in California to lead without first providing clear and reasonable warnings in violation of California Health and Safety Code section 25249.6. NATURAL FACTORS denies all material allegations contained in the Notice and Complaint.

1.7 The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment shall constitute or be construed as an admission against interest by either of the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers. Except for the representations made above in Sections 1.3 through 1.6, nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of law, or conclusion of law, nor shall compliance with this Consent Judgment be construed as an admission by the Parties of any fact, issue of law, or violation of law, at any time, for any purpose; provided, however, NATURAL FACTORS may use this Consent Judgment to document the Covered Products comply with the clear and reasonable warning obligations of Proposition 65.

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 current 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 notice on NATURAL FACTORS that it has been entered as a Judgment by this Court.

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 Complaint, personal jurisdiction
10 over NATURAL FACTORS as to the acts alleged in the 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 Notice and Complaint.

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

15 **3.1** Beginning on the date that is four months from the Effective Date (the
16 "Compliance Date"), NATURAL FACTORS shall be permanently enjoined from
17 manufacturing for sale in the State of California, "Distributing into the State of California", or
18 directly selling in the State of California, any Covered Products which expose a person to a
19 "Daily Lead Exposure Level" of more than 0.5 micrograms per day, excluding "Naturally
20 Occurring Lead (as defined below), unless it meets the warning requirements under Section 3.2.

21 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
22 of California" shall mean to directly ship a Covered Product into California for sale in
23 California or to sell a Covered Product to a distributor that NATURAL FACTORS knows or
24 has reason to know will sell the Covered Product in California.

25 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
26 Level" shall be measured in micrograms, and shall be calculated using the following formula:
27 micrograms of lead per gram of product, multiplied by grams of product per serving of the
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1 product (using the largest serving size recommended on the product label), multiplied by
2 servings of the product per day (using the largest number of servings in a recommended daily
3 dosage appearing on the product label), which equals micrograms of lead exposure per day, but
4 excluding lead which is deemed "Naturally Occurring."

5 **3.2 Clear and Reasonable Warnings**

6 If NATURAL FACTORS is required to provide a warning pursuant to Section 3.1, the
7 following warning must be utilized (the "Warning"):

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

10 NATURAL FACTORS shall use the phrase "cancer and" in the Warning only if the "Daily Lead
11 Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality
12 control methodology set forth in Section 3.4.

13 The Warning shall be securely affixed to or printed upon the packaging, container or
14 label of each Covered Product, or, for any Covered Product sold over NATURAL FACTORS'
15 website, the Warning shall appear prior to completing checkout on NATURAL FACTORS'
16 website when a California delivery address is indicated for any purchase of any Covered
17 Product. The Warning on the website must identify with an asterisk or other reasonably clear
18 and conspicuous method which of the products is subject to the Warning.

19 The Warning shall be at least the same size as the largest of any other health or safety
20 warnings also appearing on its website or on the packaging, label or container of NATURAL
21 FACTORS' product packaging and the word "**WARNING**" shall be in all capital letters and in
22 bold print. No statements contradicting or conflicting with the Warning shall accompany the
23 Warning on the packaging, label or container or the location of the website Warning.

24 NATURAL FACTORS must display the above Warning with such conspicuousness, as
25 compared with other words, statements, design of the packaging, label, container, or on its
26 website, as applicable, to render the Warning likely to be read and understood by an ordinary
27 individual under customary conditions of purchase or use of the Covered Product.

1 In the event there is an amendment to Proposition 65 or a modification to its implementing
2 regulations regarding the Maximum Allowable Dose Level ("MADL") for lead or No Significant
3 Risk Level ("NSRLs") for lead currently set forth in Health and Safety Code sections 25805 and
4 25705, respectively, this Consent Judgment shall be deemed modified on the date the amendment
5 becomes final or the regulations become effective (whichever is later) to incorporate the new
6 standards into Section 3 of this Consent Judgment. Given the August 30, 2016 issuance of new
7 regulations governing the "Safeharbor Warning Language" currently set forth in 27 Cal Code Reg.
8 sections 25600 *et seq.*, NATURAL FACTORS shall be allowed to utilize the new "Safeharbor
9 Warning Language" for foods set forth at 27 Cal. Code Reg. sections 25607.1 and 25607.2 at any
10 time on or after the Effective Date, in its sole discretion; provided, however, NATURAL
11 FACTORS shall be allowed to distribute or sell inventory on hand and units in production, and
12 then subsequently implement use of the new Safeharbor Warning Language as it prints packaging,
13 labels or containers for the Covered Product labels in the ordinary course of business. At any time
14 NATURAL FACTORS may, in its sole discretion, elect to use the Warning in lieu of the new
15 Safeharbor Warning Language.

16 3.3 Reformulated Covered Products

17 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
18 Exposure Level" is no greater than 0.5 micrograms of lead per day, excluding any "Naturally
19 Occurring Lead," as determined by the quality control methodology described in Section 3.4.

20 3.3 Testing and Quality Control Methodology

21 3.3.1 Beginning within one year of the Compliance Date, NATURAL
22 FACTORS shall arrange for lead testing of the Covered Products at least once a year for a
23 minimum of three (3) consecutive years by arranging for testing of a "Representative Sampling"
24 of each of the Covered Products in the form intended for sale to the end-user of each of the
25 Covered Products, which NATURAL FACTORS intends to sell or is manufacturing for sale in
26 California or "Distributing into the State of California." "Representative Sampling" as used
27 herein shall mean with respect to testing of finished Covered Products, the testing of two (2) or
28

1 more samples, each from a different final Covered Product of a lot or batch manufactured,
2 distributed or sold within the last year ("Manufactured Lot") of that Covered Product. The
3 testing requirement does not apply to any Covered Product for which NATURAL FACTORS
4 has provided the Warning or Safeharbor Warning Language specified in Section 3.2.

5 **3.3.2** All testing pursuant to this Consent Judgment shall be performed using a
6 laboratory method that complies with the performance and quality control factors appropriate
7 for the method used, including limit of detection, qualification, accuracy, and precision that
8 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
9 under the protocol set forth in EPA Method 6020 or 6020A achieving a limit of quantification
10 of less than or equal to 0.010 mg/kg. In the event that equally or more accurate testing methods
11 are developed or identified and accepted by the scientific community as accurate enough to
12 allow for the detection and quantification of lead to ascertain compliance under this Consent
13 Judgment, any Party shall have the right to move the court to modify this Consent Judgment as
14 set forth in Section 5 herein.

15 **3.3.3** All testing pursuant to this Consent Judgment shall be performed at
16 NATURAL FACTOR's in-house laboratories or by a third party laboratory certified,
17 accredited, or registered by an agency of the United States, California or another State of the
18 United States, including by not limited to the U.S. Environmental Protection Agency, the U.S.
19 Food and Drug Administration, or the California Department of Health Services, for the
20 purposes of administering the specific protocol used in such testing. If a given agency does
21 not certify specific protocols for testing for lead in dietary supplements, the certification,
22 accreditation customarily bestowed upon laboratories testing dietary supplements or ingredients
23 in dietary supplements for lead in according with that agency's standards shall be required; if
24 no such agency standards exist specifically for dietary supplements then the standard for foods
25 shall be required.

26 **3.3.4** In fulfilling its duty to ascertain the concentration of lead in each
27 Covered Product, NATURAL FACTORS may at its option, test (or rely on testing of the
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Covered Product by others) Representative Samples of the finished Covered Products.

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

3.3.6 NATURAL FACTORS shall retain all test results and documentation for a period of three (3) years from the date of each test. At any time following the Compliance Date, ERC may request that NATURAL FACTORS provide within thirty (30) days of the date of its request, documentation supporting the sale in California of any Covered Product without the health hazard warnings specified in this Consent Judgment.

3.3.7 NATURAL FACTORS shall be allowed to exclude exposures to the following amounts of lead in a Covered Product, which are deemed "Naturally Occurring Lead" for purposes of this Consent Judgment:

0.8 micrograms per gram ("mcg/g") in elemental calcium, up to a maximum exclusion of 1.2 mcg if there is 1500 milligrams or more of elemental calcium per recommended serving on the label; 0.4 mcg/g in Ferrous Fumarate; 8.0 mcg/g in zinc oxide; 0.4 mcg/g in magnesium oxide; 0.332 mcg/g in magnesium carbonate; 0.4 mcg/g in magnesium hydroxide; 0.8 mcg/g in zinc gluconate; 1.1 mcg/g in potassium chloride; 1.0 mcg/g in cocoa powder, 1.0 mcg/g in chocolate liquor and 0.1 mcg/g in cocoa butter.

If NATURAL FACTORS intends to utilize the amounts of lead deemed "Naturally Occurring" for purposes of this Consent Judgment, it must submit to ERC upon request a list showing all of the ingredients of each Covered Product for which a "Naturally Occurring Allowance" is claimed, and a worksheet documenting the allowances in the Covered Product. NATURAL FACTORS will be entitled to submit this information to ERC confidentially. ERC shall be liable to Natural Factors for damages if ERC releases the confidential information or third parties obtain the confidential information from or through ERC.

1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
3 penalties, attorney's fees, and costs, NATURAL FACTORS shall make a total payment of
4 \$150,000.00 ("Total Settlement Amount") to ERC within five (5) days of the Effective Date.
5 NATURAL FACTORS shall make this payment by wire transfer to ERC's escrow account, for
6 which ERC will give NATURAL FACTORS the necessary account information. The Total
7 Settlement Amount shall be apportioned as follows:

8 **4.2** \$52,642.06 shall be considered a civil penalty pursuant to California Health
9 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$39,481.55) of the civil penalty
10 to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
11 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
12 Code section 25249.12(c) within fifteen (15) days of receipt. ERC will retain the remaining
13 25% (\$13,160.51) of the civil penalty.

14 **4.3** \$5,484.44 shall be distributed to ERC as reimbursement to ERC for
15 reasonable costs incurred in bringing this action.

16 **4.4** \$52,642.06 shall be distributed to ERC in lieu of further civil penalties, for
17 the day-to-day business activities such as (1) continued enforcement of Proposition 65, which
18 includes work analyzing, researching, and testing consumer products that may contain
19 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
20 the subject matter of the current action; (2) the continued monitoring of past consent judgments
21 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
22 donation of \$2,632.10 to the Center For Environmental Health to address reducing toxic
23 chemical exposures in California.

24 **4.5** \$17,500.00 shall be distributed to Lozeau Drury LLP as reimbursement of
25 ERC's attorney's fees, while \$21,731.44 shall be distributed to ERC for its in-house legal fees.
26 Except as explicitly provided herein, each Party shall bear its own fees and costs.

27 **4.6** In the event that NATURAL FACTORS fails to remit the Total Settlement
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1 Amount owed under Section 4 of this Consent Judgment on or before the Due Date,
2 NATURAL FACTORS shall be deemed to be in material breach of its obligations under this
3 Consent Judgment. ERC shall provide written notice of the delinquency to NATURAL
4 FACTORS via electronic mail. If NATURAL FACTORS fails to deliver the Total Settlement
5 Amount within five (5) days from the written notice, the unpaid portion of the Total Settlement
6 Amount shall become immediately due and payable and shall accrue interest at the statutory
7 judgment interest rate provided in the Code of Civil Procedure section 685.010. Additionally,
8 NATURAL FACTORS agrees to pay ERC's reasonable attorney's fees and costs for any
9 efforts to collect the payment due under this Consent Judgment if the Total Settlement Amount
10 is not paid within five (5) days of the written notice of delinquency.

11 **5. MODIFICATION OF CONSENT JUDGMENT**

12 **5.1** This Consent Judgment may be modified (i) by written stipulation of the Parties
13 or pursuant to Section 5.3 and (ii) upon entry by the Court of a modified consent judgment.
14 Notice of any motion to modify shall be served on the Office of the Attorney General of
15 California.

16 **5.2** If a Party seeks to modify this Consent Judgment under Section 5.1, that Party
17 must provide written notice to the other Party of its intent ("Notice of Intent"). The Party who
18 receives the Notice of Intent must, within thirty (30) days of receipt either elect to take no
19 position on the proposed modification or seek to meet and confer regarding the proposed
20 modification in the Notice of Intent. The Parties shall meet and confer in good faith as required
21 in this Section in person or via telephone within thirty (30) days of the election to meet and
22 confer. After the meet and confer the Party seeking the modification either shall file a noticed
23 motion seeking the modification as proposed, or as modified during the meet and confer
24 process or elect to forgo the modification. Should it become necessary, the Parties may agree
25 in writing to different deadlines for the meet-and-confer period.

1 **5.3** Where the meet-and-confer process does not lead to a joint motion or an
2 uncontested motion in support of a modification of the Consent Judgment, then either Party
3 may seek judicial relief on its own.

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

6 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
7 terminate this Consent Judgment.

8 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
9 Covered Product (for which ERC alleges that no Warning or Safeharbor Warning Language
10 has been provided), then ERC shall inform NATURAL FACTORS in a reasonably prompt
11 manner of its test results, including information sufficient to permit NATURAL FACTORS to
12 identify the Covered Products at issue. NATURAL FACTORS shall, within thirty (30) days
13 following such notice, provide ERC with testing information, obtained in accordance with
14 Sections 3.4., demonstrating NATURAL FACTORS' compliance with the Consent Judgment,
15 if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any
16 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, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
21 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
22 application to Covered Products which are distributed or sold outside the State of California and
23 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 NATURAL FACTORS and its respective
27 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
28

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

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

17 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
18 alleged in the Notice or the Complaint and relating to the Covered Products, will develop or be
19 discovered. ERC on behalf of itself only, and NATURAL FACTORS on behalf of itself only,
20 acknowledge that this Consent Judgment is expressly intended to cover and include all such
21 claims up through and including the Effective Date, including all rights of action therefore.
22 ERC and NATURAL FACTORS acknowledge that the claims released in Sections 8.1 and 8.2
23 above may include unknown claims, and nevertheless waive California Civil Code Section
24 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

1 ERC on behalf of itself only, and NATURAL FACTORS on behalf of itself only, acknowledge
2 and understand by their initials below the significance and consequences of this specific waiver
3 of California Civil Code section 1542. QDERC _____ NATURAL FACTORS

4 **8.1** Compliance with the terms of this Consent Judgment by NATURAL
5 FACTORS after the Effective Date shall be deemed to constitute compliance with Proposition
6 65 by any Released Party regarding alleged exposures to lead in the Covered Products as set
7 forth in the Notice and the Complaint.

8 **8.2** Nothing in this Consent Judgment is intended to apply to any occupational
9 or environmental exposures arising under Proposition 65, nor shall it apply to any of
10 NATURAL FACTORS' products other than the Covered Products.

11 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

14 **10. GOVERNING LAW**

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


17 **11. PROVISION OF NOTICE**

18 All notices required to be given to either Party to this Consent Judgment by the other shall
19 be in writing and sent to the following agents listed below via first-class mail, or via an overnight
20 delivery service with a tracking function. Courtesy copies via email may also be sent.

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

22 Chris Heptinstall, Executive Director, Environmental Research Center
23 3111 Camino Del Rio North, Suite 400
24 San Diego, CA 92108
25 Tel: (619) 500-3090
26 Email: chris_erc501c3@yahoo.com

27 With a copy to:
28 RICHARD T. DRURY
REBECCA L. DAVIS
LOZEAU | DRURY LLP

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

22 Chris Heptinstall, Executive Director, Environmental Research Center
23 3111 Camino Del Rio North, Suite 400
24 San Diego, CA 92108
25 Tel: (619) 500-3090
26 Email: chris_erc501c3@yahoo.com

27 With a copy to:
28 RICHARD T. DRURY
REBECCA L. DAVIS
LOZEAU | DRURY LLP

1 410 12th Street, Suite 250
2 Oakland, CA 94607
3 Ph: 510-836-4200
4 Fax: 510-836-4205
5 Email: richard@lozeaudrury.com

6 NATURAL FACTORS NUTRITIONAL PRODUCTS INC.
7 Natural Factors Nutritional Products, Inc.
8 Attention: Mr. Ron Smith
9 1111 - 80th Street SW, Suite 100
10 Everett, WA 98203

11 With a copy to:
12 JUDITH PRAITIS
13 AMY P. LALLY
14 SIDLEY AUSTIN LLP
15 555 West Fifth Street, Suite 4000
16 Los Angeles, California 90013-1010
17 Telephone: (213) 896-6000
18 Facsimile: (213) 896-6600
19 jpraitis@sidley.com
20 alally@sidley.com.

14 12. COURT APPROVAL

15 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall
16 notice a Motion for Court Approval. NATURAL FACTORS agrees not to oppose entry of this
17 Consent Judgment.

18 12.2 If the California Attorney General objects to any term in this Consent
19 Judgment, the Party to whom the objection is addressed shall use reasonable efforts to resolve
20 the objection in a timely manner, and if possible prior to the hearing on the Motion for Court
21 Approval. If the objection concerns both Parties, then both agree to use reasonable efforts to
22 resolve the objection; provided, however, no Party shall be required to take a position against
23 its interests.

24 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall
25 be 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

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
2 as the original signature.

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

18 ERC may, by motion or order to show cause before the Superior Court of Alameda
19 County, enforce the terms and conditions contained in this Consent Judgment. In any action
20 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
21 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

22 **17. ENTIRE AGREEMENT, AUTHORIZATION**

23 **17.1** This Consent Judgment contains the sole and entire agreement and
24 understanding of the Parties with respect to the entire subject matter herein, and any and all
25 prior discussions, negotiations, commitments, and understandings related hereto. No
26 representations, oral or otherwise, express or implied, other than those contained herein have
27

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

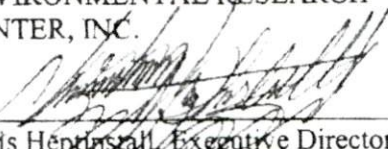
5 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
6 **CONSENT JUDGMENT**

7 This Consent Judgment has come before the Court upon the Motion of ERC. The Parties
8 request the Court to fully review this Consent Judgment and, being fully informed regarding the
9 matters which are the subject of this action, to
10 make the findings pursuant to California Health and Safety Code section 25249.7(f)(4)
11 necessary to approve the settlement.

12 **IT IS SO STIPULATED:**

13 Dated: 9/29/, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

16 Dated: _____, 2016

NATURAL FACTORS NUTRITIONAL
PRODUCTS INC.

19 By: _____
20 Its: _____

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
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3 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
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7 This Consent Judgment has come before the Court upon the Motion of ERC. The Parties
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9 matters which are the subject of this action, to
10 make the findings pursuant to California Health and Safety Code section 25249.7(f)(4)
11 necessary to approve the settlement.

12 **IT IS SO STIPULATED:**

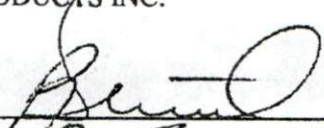
13 Dated: _____, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

14 By: _____
15 Chris Heptinstall, Executive Director

16 Dated: SEPTEMBER 29, 2016

NATURAL FACTORS NUTRITIONAL
PRODUCTS INC.

17
18 
19 By: RON SMITH, VP QUALITY
20 Its:

1 APPROVED AS TO FORM:

2 Dated: Sept. 29, 2016

LOZEAU | DRURY LLP

3 By: 

4 Richard T. Drury

Rebecca L. Davis

Attorneys for Plaintiff Environmental
Research Center, Inc.

6
7 Dated: September 29, 2016

SIDLEY AUSTIN LLP

8
9 By: 

Judith Pratis

Amy P. Lally

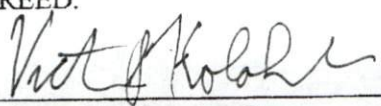
Attorneys for Natural
Factors Nutritional Products Inc.

13 **ORDER AND JUDGMENT**

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17
18 Dated: December 16, 2016


Judge of the Superior Court

Victoria S. Kolakowski

EXHIBIT A



LOZEAU DRURY LLP

T 510.836.4200
F 510.836.4205

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www.lozeaudrury.com
rebecca@lozeaudrury.com

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Canada

Current CEO or President
Natural Factors Inc.
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Coquitlam, BC V3K 6Y2
Canada

Current CEO or President
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Current CEO or President
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Calgary AB T3H 3C8
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Current CEO or President
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Monroe, WA 98272

VIA CERTIFIED MAIL

Current CEO or President
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Current CEO or President
Natural Factors Nutritional Products Inc.
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Everett, WA 98203

Current CEO or President
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1-3655 Bonneville Place
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Cairncross & Hempelmann PS
(Natural Factors Nutritional Products Inc.'s
Registered Agent for Service of Process)
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Seattle, WA 98104

VIA ELECTRONIC MAIL

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VIA ELECTRONIC MAIL

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Prop65@rivcoda.org

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Ventura, CA 93009
daspecialops@ventura.org

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

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

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

Dear Addressees:

I represent 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 names of the Companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Natural Factors Nutritional Products Ltd.
Natural Factors Inc.
InovoBiologic Inc.
Natural Factors Nutritional Products Inc.**

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

- 1) InovoBiologic Inc. Natural Factors PGX Satisfast Vegan Protein Dark Chocolate - Lead
- 2) InovoBiologic Inc. Natural Factors PGX Satisfast Vegan Protein Very Vanilla - Lead
- 3) Natural Factors SlimStyles Weight Loss Drink Mix with PGX French Vanilla - Lead
- 4) Natural Factors SlimStyles Weight Loss Drink Mix with PGX Double Chocolate - Lead
- 5) Natural Factors Whey Factors Matcha Green Tea - Lead
- 6) Natural Factors WellBetX PGX Plus Mulberry - Lead
- 7) Natural Factors WellBetX Glucose Balance Herbal Formula - Lead
- 8) Natural Factors HerbalFactors Milk Thistle Phytosome - Lead
- 9) Natural Factors 7 Day Total Nutritional Cleansing Program - Lead
(*kit includes the following products*)
 - a) Natural Factors 7 Day Total Nutritional Cleansing Program Step 1 RevitalX Intestinal Rejuvenation Formula
 - b) Natural Factors 7 Day Total Nutritional Cleansing Program Step 2 Detoxitech Detoxification and Cellular Cleansing
 - c) Natural Factors 7 Day Total Nutritional Cleansing Program Colon Support & Liver Support
- 10) Natural Factors Organic MacaRich Super Strength Power Maca with Ginseng - Lead
- 11) Natural Factors WomenSense Anti-Stress AdrenaSense Adrenal Formula - Lead
- 12) Natural Factors HerbalFactors Liv-Gall Cleanse - Lead

- 13) Natural Factors WellBetX PGX Weight Loss Shake Chocolate - Lead
- 14) Natural Factors WellBetX PGX Weight Management Shake French Vanilla - Lead
- 15) Natural Factors SlimStyles Weight Loss Drink Mix with PGX Rich Mocha - Lead
- 16) Natural Factors SlimStyles Weight Loss Drink Mix with PGX Very Strawberry - Lead
- 17) Natural Factors Detoxitech - Lead
- 18) Natural Factors Vegan Protein Factors Vanilla Bean - Lead
- 19) Natural Factors Men's MultiStart Dr. Michael Murray Formulated - Lead
- 20) Natural Factors Men's 50+ MultiStart Dr. Michael Murray Formulated - Lead
- 21) Natural Factors Women's Plus MultiStart Dr. Michael Murray Formulated - Lead
- 22) Natural Factors PGX Satisfast Whey Protein Energy Drink Mix Very Vanilla - Lead
- 23) Natural Factors PGX Satisfast Whey Protein Energy Drink Mix Double Chocolate - Lead
- 24) InovoBiologic Inc. PGX Satisfast Vegan Protein Very Strawberry - Lead
- 25) InovoBiologic Inc. PGX Satisfast Organic Vegan Protein Bar Very Berry Dark Chocolate - Lead
- 26) InovoBiologic Inc. PGX Satisfast Organic Vegan Protein Bar Dark Chocolate Coconut - Lead
- 27) InovoBiologic Inc. PGX Satisfast Organic Vegan Protein Bar Dark Chocolate Peanut Butter - 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 Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators 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 Violators.

The Violators have 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 Violators violated Proposition 65 because they 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 January 13, 2013 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 Violators agree 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,



Rebecca Davis

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Natural Factors Nutritional Products Ltd., Natural Factors Inc.,
InovoBiologic Inc., Natural Factors Nutritional Products Inc., and its Registered Agent
for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

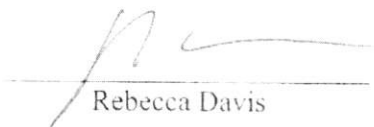
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by
Natural Factors Nutritional Products Ltd.; Natural Factors Inc.; InovoBiologic Inc.;
and Natural Factors Nutritional Products Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 13, 2016



Rebecca Davis

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 January 13, 2016, 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
Natural Factors Nutritional Products Ltd.
1550 United Boulevard
Coquitlam BC V3K 6Y2
Canada

Current CEO or President
Natural Factors Inc.
1550 United Boulevard
Coquitlam, BC V3K 6Y2
Canada

Current CEO or President
InovoBiologic Inc.
104-1240 Kensington Road NW
Calgary AB T2N 3P7
Canada

Current CEO or President
InovoBiologic Inc.
101-3680 Bonneville Place
Burnaby BC V3N 4T5
Canada

Current CEO or President
InovoBiologic Inc.
1002-246 Stewart Green SW
Calgary AB T3H 3C8
Canada

Current CEO or President
InovoBiologic Inc.
14224 167th Avenue, SE
Monroe, WA 98272

Current CEO or President
Natural Factors Nutritional Products Inc.
14224 167th Avenue, SE
Monroe, WA 98272

Current CEO or President
Natural Factors Nutritional Products Inc.
1420 80th Street, SW
Everett, WA 98203

Current CEO or President
Natural Factors Nutritional Products Inc.
1-3655 Bonneville Place
Burnaby BC V3N 4S9
Canada, FO 00001

Cairncross & Hempelmann PS
(Natural Factors Nutritional Products Inc.'s
Registered Agent for Service of Process)
524 2nd Avenue, #500
Seattle, WA 98104

On January 13, 2016, 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 January 13, 2016, 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
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

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

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

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

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

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

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

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

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

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

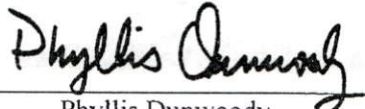
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

January 13, 2016

Page 9

On January 13, 2016, 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 January 13, 2016, in Fort Oglethorpe, Georgia,



Phyllis Dunwoody

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

January 13, 2016

Page 10

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

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County
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County
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0004

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Obispo County
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San Luis Obispo, CA 93408

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Redwood City, CA 94063

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Barbara County
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Santa Barbara, CA 93101

District Attorney, Santa Cruz
County
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Santa Cruz, CA 95060

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Redding, CA 96001

District Attorney, Sierra
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District Attorney, Siskiyou
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Yreka, CA 96097

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Fairfield, CA 94533

District Attorney, Stanislaus
County
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Modesto, CA 95354

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County
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Yuba City, CA 95991

District Attorney, Tehama
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Red Bluff, CA 96080

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

District Attorney, Tuolumne
County
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Sonora, CA 95370

District Attorney, Yuba
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Marysville, CA 95901

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800
Los Angeles, CA 90012

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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

27 CCR Appendix A

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:

Page 1

Date: January 13, 2016

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.

Page 2

Date: January 13, 2016

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).

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

27 CCR Appendix A, 27 CA ADC Appendix A