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5 Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

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11 Attorney for Defendants
12 TRADER JOE'S COMPANY and
13 TRADER JOE'S EAST, INC.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF ALAMEDA**

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

18 Plaintiff,

19 vs.

20 TRADER JOE'S COMPANY, a California
21 corporation, and TRADER JOE'S EAST, INC.
a Massachusetts corporation,

22 Defendants.
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ENDORSED
FILED
ALAMEDA COUNTY

FEB 15 2017

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

Case No. RG16833585

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 3, 2016

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On October 3, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
5 provisions of California Health and Safety Code section 25249.5 et seq. (“Proposition 65”),
6 against Trader Joe’s Company and Trader Joe’s East, Inc. (collectively “Trader Joe’s”). ERC
7 alleges that the following products (referred to hereinafter individually as a “Covered Product”
8 or collectively as “Covered Products”) sold by Trader Joe’s contain lead, a chemical listed under
9 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at
10 a level requiring a Proposition 65 warning:

- 11 • Trader Joe’s Trader Darwin’s Soy Protein Powder Quick Dissolve Vanilla
12 Flavored (SKU No. 35336)
- 13 • Trader Joe’s Organic Hemp Protein Powder Vanilla Flavored (SKU No. 93156)
- 14 • Trader Joe’s Super Green Drink Powder Berry Flavor (SKU No. 99157)

15 **1.2** ERC and Trader Joe’s are hereinafter referred to individually as a “Party” or
16 collectively as the “Parties.”

17 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
18 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
19 and toxic chemicals, facilitating a safe environment for consumers and employees, and
20 encouraging corporate responsibility.

21 **1.4** ERC alleges that each entity has employed ten or more persons at all times
22 relevant to this action, and qualifies as a “person in the course of business within the meaning of
23 Proposition 65. Trader Joe’s Company manufactures, distributes, and sells the Covered
24 Products.

25 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
26 dated January 13, 2016 that was served on the California Attorney General, other public
27 enforcers, and Trader Joe’s (“Notice”). A true and correct copy of the Notice is attached as
28 **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 Trader Joe’s, and no

1 designated governmental entity has filed a complaint against Trader Joe's with regard to the
2 Covered Products or the alleged violations.

3 **1.6** ERC's Notice and Complaint allege that use of the Covered Product exposes
4 persons in California to lead without first providing clear and reasonable warnings in violation of
5 California Health and Safety Code Section 25249.6. Trader Joe's generally denies all material
6 and factual allegations contained in or arising from ERC's Notice, asserts that it has various
7 affirmative defenses to such potential claims, and specifically denies that the Plaintiff or
8 California consumers have been harmed or damaged by its conduct or products, including the
9 Covered Products.

10 **1.7** The Parties have entered into this Consent Judgment in order to settle,
11 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
12 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of the
13 Parties (or by any of their respective officers, directors, shareholders, employees, agents, parent
14 companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers, distributors,
15 wholesalers, or retailers) of any fact, conclusion of law, issue of law, violation of law, fault,
16 wrongdoing, or liability. Nothing in this Consent Judgment or any document referred to shall be
17 construed as giving rise to any presumption or inference of admission or concession by the
18 Parties as to any fault, wrongdoing, or liability. This Section shall not diminish or otherwise
19 affect the obligations, responsibilities, and duties of the Parties under this Agreement.

20 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
21 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
22 other or future legal proceeding. Provided however, nothing in this Section shall affect the
23 enforceability of this Consent Judgment.

24 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as a
25 Judgment by this Court.

26 **2. JURISDICTION AND VENUE**

27 **2.1** For purposes of this Consent Judgment and any further court action that may
28 become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has

1 subject matter jurisdiction over the allegations of violations contained in the Complaint, personal
2 jurisdiction over Trader Joe's as to the acts alleged in the Complaint, that venue is proper in
3 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
4 final resolution of all claims up through and including the Compliance Date which were or could
5 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 three months from the Effective Date ("Compliance Date"), Trader
8 Joe's shall not "Distribute into 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 the
10 maximum suggested dose is taken as directed on the Covered Product's label, unless each such
11 unit of the Covered Products meets the warning requirements under Section 3.2.

12 **3.1.1** As used in this Consent Judgment, the term "Distribute(d) into the State of
13 California" shall mean to sell, at a Trader Joe's store in California, a Covered Product.

14 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level"
15 shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings of
18 the product per day (using the largest number of servings in a recommended dosage appearing on
19 the product label), which equals micrograms of lead exposure per day.

20 **3.1.3** Trader Joe's is not required to undertake any efforts or conduct to remove
21 from the stream of commerce Covered Products that have entered into the stream of commerce
22 prior to the Compliance Date. All Covered Products that have been or will have been
23 distributed, shipped, sold, or otherwise placed in the stream of commerce by Trader Joe's
24 through and including the Compliance Date of this Consent Judgment are exempt from the
25 provisions of Section 3 and are included within the release in Section 8.

26 **3.2 Clear and Reasonable Warnings**

27 **3.2.1** If Trader Joe's is required to provide a warning pursuant to Section 3.1,
28 the following warning must be utilized ("Warning"):

1 **WARNING:** This product can expose you to chemicals including [lead] which is known to
2 the State of California to cause [cancer and] birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov.

3 Trader Joe's shall use the phrase "cancer and" in the Warning only if the maximum recommended
4 daily dose causes an exposure to more than 15 micrograms of lead when taken as directed on the
5 Covered Product's label.

6 3.2.2 Beginning on the Compliance Date, Trader's Joe's shall cease and desist
7 from using labels on the Covered Products (a) containing recommendation that more than one
8 serving size of a Covered Product be consumed per day; and (b) declaring a recommended
9 serving size greater than the following amounts:

- 10 • Trader Joe's's Trader Darwin's Soy Protein Powder Quick Dissolve Vanilla: 15 g
- 11 • Trader Joe's Organic Hemp Protein Powder Vanilla Flavor: 30g

12 To the extent that ERC believes Trader Joe's has overlooked a label subject to this
13 obligation, it shall notify Trader Joe's and provide Trader Joe's with an opportunity to cure
14 pursuant to Section 6.2 below.

15 3.2.3 For sales at brick and mortar retail establishments in California, the
16 warning statement set forth in Section 3.2 shall be prominent at the point of display of the
17 Covered Products wherever they are offered for sale in California. Signs shall not be covered or
18 obscured, and the warning statement shall be displayed with such conspicuousness, as compared
19 with other words, statements, designs, or devices at the point of display in California, as to
20 render it likely to be read and understood by an ordinary individual prior to purchase or use. The
21 Warning shall be presented on a sign or shelf label in a font no smaller than the largest type size
22 used for other information on the sign or on a shelf label for similar products. The word
23 "WARNING" shall be in capital letters and in bold print. No statements contradicting or
24 conflicting with the Warning shall accompany the warning.

25 4. SETTLEMENT PAYMENT

26 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
27 attorneys' fees, and costs, Trader Joe's shall make a total payment of \$105,000.00 ("Total
28 Settlement Amount") to ERC within 14 days of the Effective Date ("Due Date"). Trader Joe's

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1 shall make this payment by wire transfer to ERC's escrow account, for which ERC will give
2 Trader Joe's the necessary account information. The Total Settlement Amount shall be
3 apportioned as follows:

4 4.2 \$29,553.62 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$22,165.22) of the civil penalty to the
6 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code section 25249.12(c). ERC will retain the remaining 25% (\$7,388.40) of the civil penalty.

9 4.3 \$8,960.94 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 4.4 \$22,165.18 shall be distributed to ERC as an Additional Settlement Payment
12 ("ASP"), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d) and
13 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
14 caused by Defendant in this matter. These activities are detailed below and support ERC's
15 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
16 supplement products in California. ERC's activities have had, and will continue to have, a direct
17 and primary effect within the State of California because California consumers will be benefitted
18 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
19 providing clear and reasonable warnings to California consumers prior to ingestion of the
20 products.

21 4.5 Based on a review of past years' actual budgets, ERC is providing the following
22 list of activities ERC engages in to protect California consumers through Proposition 65 citizen
23 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
24 activities: (I) ENFORCEMENT (55-70%): obtaining, shipping, analyzing, and testing dietary
25 supplement products that may contain lead and are sold to California consumers; continued
26 monitoring and enforcement of past consent judgments and settlements to ensure companies are
27 in compliance with their obligations thereunder, with a specific focus on those judgments and
28 settlements concerning lead (which necessarily includes additional work purchasing, processing,

1 analyzing, and testing consumer products; litigating matters that result in defaults, bankruptcies,
2 or dismissals; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's
3 Voluntary Compliance Program by acquiring products from companies, developing and
4 maintaining a case file, testing products from these companies, providing the test results and
5 supporting documentation to the companies, and offering guidance in implementing a self-testing
6 program for lead in dietary supplement products; (3) "GOT LEAD" PROGRAM (up to 5%):
7 maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products
8 that reach California consumers by providing access to free testing for lead in dietary supplement
9 products (products submitted to the program are screened for ingredients which are suspected to
10 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory
11 for testing, and the results shared with the consumer that submitted the product); (4)
12 DONATION: from this settlement, a donation of \$1,100.00 to Center For Environmental
13 Health_ will be provided to address reducing toxic chemical exposures in California and
14 following up with the recipient to ensure the funds are utilized in a manner that is consistent with
15 ERC's mission and stated purpose of the Donation; (5) PUBLIC OUTREACH (up to 5%): public
16 outreach programs including maintaining ERC's blog, website, and social media accounts;
17 (6) SPECIAL PROJECTS (10-20%): projects including obtaining expert and legal opinions not
18 specific to any one case that are necessary to the continued private enforcement of Proposition
19 65; (7) SCHOLARSHIPS (up to 5%): scholarships for college students in California who have
20 been or are currently diagnosed with cancer or who are pursuing an environmental health science
21 major; and (8) PRODUCT DATABASE (up to 5%): maintaining a database with all products
22 sold to California consumers that ERC has tested for lead, cadmium, or arsenic.

23 4.6 ERC will maintain adequate records to document that the funds paid as an ASP
24 are spent on the activities described herein. ERC shall provide the Attorney General, within
25 thirty days of any request, copies of documentation demonstrating how such funds have been
26 spent.

27 4.7 \$18,200.00 shall be distributed to the Law Office of Richard M. Franco as
28 reimbursement of ERC's attorneys' fees, while \$26,120.26 shall be distributed to ERC for its

1 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
2 costs.

3 **4.8** In the event that Trader Joe's fails to remit the Total Settlement Payment owed
4 under Section 4 of this Consent Judgment on or before the Due Date, Trader Joe's shall be
5 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
6 provide written notice of the delinquency to Trader Joe's via electronic mail. If Trader Joe's
7 fails to deliver the Total Settlement Payment within fifteen (15) days from the written notice, the
8 Total Settlement Payment shall accrue interest at the statutory judgment interest rate provided in
9 the California Code of Civil Procedure section 685.010.

10 **5. MODIFICATION OF CONSENT JUDGMENT**

11 **5.1** This Consent Judgment may be modified by written agreement and stipulation of
12 the Parties and upon having such stipulation reported to the Office of the California Attorney
13 General at least twenty-one days in advance of its submission to the Court for approval. ERC
14 shall not unreasonably withhold agreement to any modification requested by Trader Joe's based
15 on an amendment to Proposition 65 or its supporting regulations, or a change in the case law
16 interpreting Proposition 65. If either party seeks to modify this Consent Judgment, then it must
17 provide written notice to the other party of its intent. If despite their meet-and-confer efforts, the
18 Parties are unable to reach agreement on a stipulated modification, either Party may file a noticed
19 motion for modification with the Court for good cause shown, provided a copy of the motion is
20 also served on the other Party and the Office of the California Attorney General.

21 **6. RETENTION OF JURISDICTION AND ENFORCEMENT**

22 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
23 this Consent Judgment.

24 **6.2** If ERC alleges that any Covered Product is being "Distributed into California"
25 which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead
26 per day when the maximum suggested dose is taken as directed on the Covered Product's label
27 (for which ERC alleges that no Warning has been provided), then ERC shall inform Trader Joe's
28 in a reasonably prompt manner of its test results, including information sufficient to permit

1 Trader Joe's to identify the Covered Product at issue. The Parties shall first attempt to resolve
2 the matter prior to ERC taking any further legal action. As long as Trader Joe's cures any such
3 alleged violations within the 30 (thirty) days of receipt of the written notice by ceasing the sale
4 of the Covered Products in California until such time as warnings are provided for it pursuant to
5 Section 3.2 above, then there shall be deemed no material violation.

6 **7. APPLICATION OF CONSENT JUDGMENT**

7 **7.1** This Consent Judgment may apply to, be binding upon, and benefit the Parties
8 and their respective officers, directors, shareholders, employees, agents, parent companies,
9 subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers),
10 distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent
11 Judgment shall have no application to Covered Products which is distributed or sold exclusively
12 outside the State of California and which is not used by California consumers.

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

14 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
15 behalf of itself and in the public interest, and Trader Joe's and its respective officers, directors,
16 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
17 franchisees, licensees, customers (not including private label customers of Trader Joe's),
18 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
19 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
20 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the
21 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
22 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the
23 handling, use, or consumption of the Covered Products, as to any alleged violation of Proposition
24 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on
25 the Covered Products regarding lead up to and including the Compliance Date.

26 **8.2** ERC on its own behalf only, and Trader Joe's on its own behalf only, further
27 waive and release any and all claims they may have against each other for all actions or
28 statements made or undertaken in the course of seeking or opposing enforcement of Proposition

1 65 in connection with the Notice and Complaint up through and including the Compliance Date,
2 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
3 enforce the terms of this Consent Judgment. In addition, going forward, the Parties shall not
4 cause any aspect of this matter, the Notice, or the terms of this Consent Judgment not otherwise
5 available in the public record to be reported to the public or any media or news-reporting outlet.
6 Regardless of the form or formality of a communication or statement to the media or other
7 person or entity, neither any Party nor their counsel shall disparage the other. Notwithstanding
8 these obligations, the Parties may make such disclosures regarding this matter and terms of this
9 Consent Judgment as necessary to auditors or as otherwise required by state or federal law.

10 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC on behalf of itself only, and Trader Joe's on behalf of itself only, acknowledge
13 that this Consent Judgment is expressly intended to cover and include all such claims up through
14 and including the Compliance Date, including all rights of action therefore. ERC and Trader
15 Joe's acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown
16 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
17 claims. California Civil Code section 1542 reads as follows:

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

23 ERC on behalf of itself only, and Trader Joe's on behalf of itself only, acknowledge and
24 understand the significance and consequences of this specific waiver of California Civil Code
25 section 1542.

26 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
27 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in
28 the Covered Products as set forth in the Notice and Complaint.

8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
environmental exposures arising under Proposition 65, nor shall it apply to any of Trader Joe's

1 products other than the Covered Products.

2 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

3 **9.1** In the event that any of the provisions of this Consent Judgment are held by a
4 court to be unenforceable, the validity of the remaining enforceable provisions shall not be
5 adversely affected.

6 **10. GOVERNING LAW**

7 **10.1** The terms and conditions of this Consent Judgment shall be governed by and
8 construed in accordance with the laws of the State of California.

9 **11. PROVISION OF NOTICE**

10 **11.1** All notices required to be given to either Party to this Consent Judgment by the
11 other shall be in writing and sent to the following agents listed below via first-class mail.
12 Courtesy copies via email may also be sent.

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

14 Chris Heptinstall, Executive Director, Environmental Research Center
15 3111 Camino Del Rio North, Suite 400
16 San Diego, CA 92108
17 Tel: (619) 500-3090
18 Email: chris_erc501c3@yahoo.com

19 With a copy to:

20 RICHARD M. FRANCO
21 LAW OFFICE OF RICHARD M. FRANCO
22 6500 Estates Drive
23 Oakland, CA 94611
24 Ph: 510-684-1022
25 Email: rick@rfrancolaw.com

26 **FOR TRADER JOE'S COMPANY and TRADER JOE'S EAST, INC.**

27 Kathryn Cahan
28 Senior Vice President, General Counsel
29 Trader Joe's Company
30 800 South Shamrock Avenue
31 Monrovia, CA 91016

32 With a copy to:

33 DANIEL J. FARIA
34 O'MELVENY & MYERS LLP
35 400 South Hope Street

1 Los Angeles, CA 90071
2 Email: dfaria@omm.com

3 **12. COURT APPROVAL**

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

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

10 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be void
11 and have no force or effect.

12 **13. EXECUTION AND COUNTERPARTS**

13 **13.1** This Consent Judgment may be executed in counterparts, which taken together
14 shall be deemed to constitute one document. A facsimile or .pdf signature shall be construed to
15 be as valid as the original signature.

16 **14. DRAFTING**

17 **14.1** The terms of this Consent Judgment have been reviewed by the respective counsel
18 for each Party prior to its signing, and each Party has had an opportunity to fully discuss the
19 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
20 and construction of this Consent Judgment, no inference, assumption, or presumption shall be
21 drawn, and no provision of this Consent Judgment shall be construed against any Party, based on
22 the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all
23 or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties
24 participated equally in the preparation and drafting of this Consent Judgment.

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

26 **15.1** If a dispute arises with respect to either Party's compliance with the terms of this
27 Consent Judgment entered by the Court, the Parties shall meet and confer in person, by
28 telephone, and/or in writing, and endeavor to resolve the dispute in an amicable manner. No

1 action or motion may be filed in the absence of such a good faith attempt to resolve the dispute
2 beforehand.

3 **16. ENFORCEMENT**

4 **16.1** ERC may, by motion or order to show cause before the Superior Court of
5 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any
6 action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
7 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
8 To the extent the failure to comply with the Consent Judgment constitutes a violation of
9 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
10 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
11 law for failure to comply with Proposition 65 or other laws.

12 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

19 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
20 by the Party he or she represents to stipulate to this Consent Judgment.

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

23 **18.1** This Consent Judgment has come before the Court upon the request of the Parties.
24 The Parties request the Court to fully review this Consent Judgment and, being fully informed
25 regarding the matters which are the subject of this action, to:

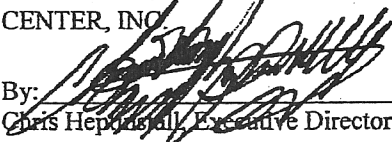
26 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
27 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
28 been diligently prosecuted, and that the public interest is served by such settlement; and

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

IT IS SO STIPULATED:

Dated: 12/7, 2016

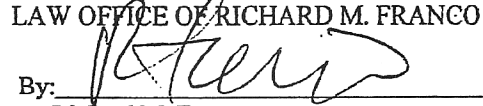
ENVIRONMENTAL RESEARCH CENTER, INC.
By: 
Chris Hepburn, Executive Director

Dated: _____, 2016

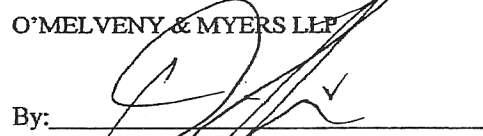
TRADER JOE'S COMPANY and TRADER JOE'S EAST, INC.
By: _____
Kathryn Cahan, Esq.
Senior Vice President, General Counsel

APPROVED AS TO FORM:

Dated: 12/7, 2016

LAW OFFICE OF RICHARD M. FRANCO
By: 
Richard M. Franco
Attorney for Plaintiff Environmental Research Center, Inc.

Dated: 12/7, 2016

O'MELVENY & MYERS LLP
By: 
Daniel J. Faria
Attorney for Defendants Trader Joe's Company and Trader Joe's East Inc.

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

IT IS SO STIPULATED:

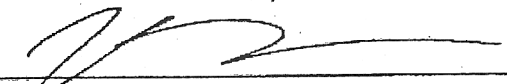
Dated: _____, 2016

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: December 6, 2016

TRADER JOE'S COMPANY and TRADER JOE'S EAST, INC.


By: Kathryn Cahan, Esq.
Senior Vice President, General Counsel

APPROVED AS TO FORM:

Dated: _____, 2016

LAW OFFICE OF RICHARD M. FRANCO

By: _____
Richard M. Franco
Attorney for Plaintiff Environmental Research Center, Inc.

Dated: _____, 2016

O'MELVENY & MYERS LLP

By: _____
Daniel J. Faria
Attorney for Defendants Trader Joe's Company and Trader Joe's East Inc.

EXHIBIT A

LAW OFFICE OF RICHARD M. FRANCO

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

VIA CERTIFIED MAIL

Current CEO or President
Trader Joe's Company
800 South Shamrock Avenue
Monrovia, CA 91016

Current CEO or President
Trader Joe's East Inc.
711 Atlantic Avenue, Floor 3
Boston, MA 02111

Current CEO or President
Trader Joe's East Inc.
800 South Shamrock Avenue
Monrovia, CA 91016

Paracorp Incorporated
(Trader Joe's Company's Registered Agent
for Service of Process)
2804 Gateway Oaks Drive, #200
Sacramento, CA 95833

Paracorp Incorporated
(Trader Joe's East Inc.'s Registered Agent
for Service of Process)
2804 Gateway Oaks Drive, #200
Sacramento, CA 95833

Paracorp Incorporated
(Trader Joe's East Inc.'s Registered Agent
for Service of Process)
44 School Street, Suite 325
Boston, MA 02108

Paracorp Incorporated
(Trader Joe's Company's Registered Agent
for Service of Process)
44 School Street, Suite 325
Boston, MA 02108

VIA ELECTRONIC MAIL

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

VIA ELECTRONIC MAIL

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

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

Stephan R. Passalacqua, District Attorney
Sonoma County
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

VIA ELECTRONIC MAIL

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

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

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

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

**Trader Joe's Company
Trader Joe's East Inc.**

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

- **Trader Joe's Trader Darwin's Soy Protein Powder Quick Dissolve Vanilla Flavored - Lead**
- **Trader Joe's Organic Hemp Protein Powder Vanilla Flavored - Lead**
- **Trader Joe's Super Green Drink Powder Berry Flavor - 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.

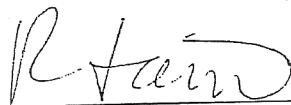
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
January 13, 2016
Page 4

resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

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

Sincerely,



Rick Franco

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Trader Joe's Company, Trader Joe's East Inc. and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

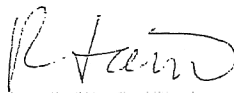
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Trader Joe's Company and Trader Joe's East Inc.**

I, Rick Franco, 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



Rick Franco

CERTIFICATE OF SERVICE

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

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

On 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
Trader Joe's Company
800 South Shamrock Avenue
Monrovia, CA 91016

Paracorp Incorporated
(Trader Joe's East Inc.'s Registered Agent
for Service of Process)
2804 Gateway Oaks Drive, #200
Sacramento, CA 95833

Current CEO or President
Trader Joe's East Inc.
711 Atlantic Avenue, Floor 3
Boston, MA 02111

Paracorp Incorporated
(Trader Joe's East Inc.'s Registered Agent
for Service of Process)
44 School Street, Suite 325
Boston, MA 02108

Current CEO or President
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(Trader Joe's Company's Registered
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44 School Street, Suite 325
Boston, MA 02108

Paracorp Incorporated
(Trader Joe's Company's Registered Agent
for Service of Process)
2804 Gateway Oaks Drive, #200
Sacramento, CA 95833

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:

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
January 13, 2016
Page 7

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
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

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

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

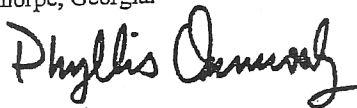
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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 8

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, 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, 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 Ctr., 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

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.**

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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

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