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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 28 2017

CLERK OF THE SUPERIOR COURT
By T. Lopez Deputy

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

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

18 Plaintiff,

19 v.

20 USANA HEALTH SCIENCES, INC., a
21 UTAH corporation,

22 Defendant.
23
24

CASE NO. RG16840320

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 28, 2016

Trial Date: None set

25 **1. INTRODUCTION**

26 1.1 On November 28, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"),
27 a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
28 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the

1 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),
2 against USANA Health Sciences, Inc. ("USANA"). In this action, ERC alleges that a number
3 of products manufactured, distributed or sold by USANA contain lead, a chemical listed under
4 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical
5 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a "Covered Product" or collectively as "Covered Products") are those identified
7 in the 60-Day Notices of Violation attached hereto as Exhibits A and B and incorporated herein
8 by reference.

9 **1.2** ERC and USANA are hereinafter referred to individually as a "Party" or
10 collectively as the "Parties."

11 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
12 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
13 and toxic chemicals, facilitating a safe environment for consumers and employees, and
14 encouraging corporate responsibility.

15 **1.4** For purposes of this Consent Judgment, the Parties agree that USANA is a
16 business entity that has employed ten or more persons at all times relevant to this action, and
17 qualifies as a "person in the course of business" within the meaning of Proposition 65. USANA
18 manufactures, distributes and sells the Covered Products.

19 **1.5** The Complaint is based on allegations contained in ERC's Notices of Violation
20 dated February 19, 2016 and October 15, 2016 that were served on the California Attorney
21 General, other public enforcers, and USANA ("Notices"). A true and correct copy of the
22 Notices are attached as Exhibit A and B, and are hereby incorporated by reference. As of the
23 date that this Stipulated Consent Judgment was transmitted to the California Attorney General
24 and presented to this Court, more than 60 days have passed since the Notices were mailed and
25 uploaded to the Attorney General's website, and no designated governmental entity has filed a
26 complaint against USANA with regard to the Covered Products or the alleged violations.

27 **1.6** ERC's Notices and Complaint allege that use of the Covered Products exposes
28 persons in California to lead without first providing clear and reasonable warnings in violation

1 of California Health and Safety Code section 25249.6. USANA denies all material allegations
2 contained in the Notices and Complaint.

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

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

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

18 2. JURISDICTION AND VENUE

19 For purposes of this Consent Judgment and any further court action that may become
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
22 over USANA as to the acts alleged in the Complaint, that venue is proper in Alameda County,
23 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
24 all claims up through and including the Effective Date which were or could have been asserted in
25 this action based on the facts alleged in the Notices and Complaint.

26 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

27 3.1 Beginning on the Effective Date, USANA shall be permanently enjoined from
28 manufacturing for sale in the State of California, "Distributing into the State of California", or

1 directly selling in the State of California, any Covered Product which exposes a person to a
2 "Daily Lead Exposure Level" of more than 0.5 micrograms per day of lead when the maximum
3 suggested dose is taken as directed on the Covered Product's label, excluding any lead deemed
4 "naturally occurring" in Section 3.3 for purposes of this Consent Judgment only, unless it meets
5 the warning requirements under Section 3.2.

6 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
7 of California" shall mean to directly ship a Covered Product into California for sale in
8 California or to sell a Covered Product to a distributor that USANA knows will sell the
9 Covered Product in California.

10 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
11 Level" shall be measured in micrograms, and shall be calculated using the following formula:
12 micrograms of lead per gram of product minus any lead deemed "naturally occurring" in
13 Section 3.3 for purposes of this Consent Judgment only, multiplied by grams of product per
14 serving of the product (using the largest serving size appearing on the product label), multiplied
15 by servings of the product per day (using the largest number of servings in a recommended
16 dosage appearing on the product label), which equals micrograms of lead exposure per day.

17 **3.2 Clear and Reasonable Warnings**

18 If USANA is required to provide a warning pursuant to Section 3.1, the following warning
19 must be utilized:

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

22 OR:

23 **WARNING:** This product contains chemicals, including lead, known to the State of
24 California to cause [cancer and] birth defects or other reproductive harm.

25 OR:

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

1 USANA shall use the phrase "cancer and" in the warning only if USANA reasonably
2 believes the maximum daily dose recommended on the label contains more than 15 micrograms of
3 lead as determined pursuant to the quality control methodology set forth in Section 3.4, or if
4 USANA reasonably believes that the daily exposure level for another Proposition 65 listed
5 carcinogen in the Covered Product contains at levels greater than the No Significant Risk Level
6 ("NSRL") set forth in 27 California Code of Regulations § 25705.

7 For website sales, the warning shall appear on USANA's website, either adjacent to the
8 Covered Product display, or adjacent to the Covered Product description, or made available
9 during the checkout process when a California delivery address is indicated for any purchase of
10 any Covered Product. The warning shall be accompanied by the following statement: "If you
11 are purchasing this product/these products for resale in the state of California, you are required to
12 provide your customer with the warnings set out above. Please contact us if you require a
13 warning." For non-website sales by USANA, the warning shall be securely affixed to or printed
14 upon the container or label of each Covered Product.

15 The warning shall be at least the same size as the largest of any other health or safety
16 warnings also appearing on its website or, for non-website sales by USANA, on the label or
17 container of USANA's product packaging and the word "**WARNING**" shall be in all capital
18 letters and in bold print. No other statements contradicting the warning may accompany the
19 warning.

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

24 **3.3 Reformulated Covered Products**

25 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
26 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
27 contains no more than 0.5 micrograms of lead per day as determined by the quality control
28 methodology described in Section 3.4, excluding amounts of naturally occurring lead in the

ingredients listed in the table below.

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

If at any time after the Effective Date, ERC tests a Reformulated Covered Product and the test results indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, USANA agrees to confidentially supply to ERC, within 30 days of a request from ERC, a list of ingredients, including the percentage of each ingredient of that particular covered product so that ERC may be able to calculate the daily exposure based on allowances contained in the above table. Should a dispute arise, the Parties shall first meet and confer in an effort to fully resolve any dispute.

3.4 Testing and Quality Control Methodology

3.4.1 To determine the Daily Exposure Level for a Covered Product, USANA shall arrange for lead testing of five randomly selected samples of such Covered Product, in the form intended for sale to the end-user, which USANA intends to sell or is manufacturing for sale in California or directly selling to a consumer in California or "Distributing into California." The testing requirement of this Section 3.4 does not apply to any of the Covered Products for which USANA has provided the warning specified in Section 3.2. If tests

1 conducted pursuant to this Section demonstrate the Daily Exposure Level for the Covered
2 Product is below 0.5 micrograms per day, taking into account amounts of naturally occurring
3 lead as set forth in Section 3.3, then no warning shall be required for the Covered Product. If
4 test results for such Covered Product show, for three consecutive years, that the Daily Exposure
5 Level is below 0.5 micrograms per day, then no warning shall be required for such Covered
6 Product and no further testing shall be required. However, if during or after the three-year
7 testing period, USANA changes ingredient suppliers for any of the Covered Products and/or
8 reformulates any of the Covered Products, USANA shall test that Covered Product annually for
9 at least three (3) consecutive years after such change is made.

10 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the highest
11 lead detection result of the five (5) randomly selected samples of the Covered Products will be
12 controlling.

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

19 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
20 independent third party laboratory certified by or pursuant to the EPA, FDA, or the State of
21 California, ISO/IEC 17025:2005, American National Standards Institute /American Society for
22 Quality ("ANSI-ASQ"), Food Analysis Performance Assessment Scheme ("FAPAS"), American
23 Association for Laboratory Accreditation ("A2LA"), or the International Accreditation Service.
24 USANA shall retain all test results and documentation for a period of five years from the date of
25 each test.

26 **3.4.5** Nothing in this Consent Judgment shall limit USANA's ability to
27 conduct, or require that others conduct, additional testing of the Covered Products, including
28 the raw materials used in their manufacture.

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, USANA shall make a total payment of \$275,000.00
4 ("Total Settlement Amount") to ERC within 10 business days of the Effective Date. USANA
5 shall make this payment by wire transfer to ERC's escrow account, for which ERC will give
6 USANA the necessary account information. The Total Settlement Amount shall be
7 apportioned as follows:

8 **4.2** \$133,933.20 shall be considered a civil penalty pursuant to California Health
9 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$100,449.90) of the civil penalty to
10 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 §25249.12(c). ERC will retain the remaining 25% (\$33,483.30) of the civil penalty.

13 **4.3** \$4,796.20 shall be distributed to ERC as reimbursement to ERC for reasonable
14 costs incurred in bringing this action.

15 **4.4** \$100,449.70 shall be distributed to ERC as an Additional Settlement Payment
16 ("ASP"), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d) and
17 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
18 caused by Defendant in this matter. These activities are detailed below and support ERC's
19 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
20 supplement products in California. ERC's activities have had, and will continue to have, a direct
21 and primary effect within the State of California because California consumers will be benefitted
22 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
23 providing clear and reasonable warnings to California consumers prior to ingestion of the
24 products.

25 Based on a review of past years' actual budgets, ERC is providing the following list of
26 activities ERC engages in to protect California consumers through Proposition 65 citizen
27 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
28 activities: (1) ENFORCEMENT (55-70%): obtaining, shipping, analyzing, and testing dietary

1 supplement products that may contain lead and are sold to California consumers; continued
2 monitoring and enforcement of past consent judgments and settlements to ensure companies are
3 in compliance with their obligations thereunder, with a specific focus on those judgments and
4 settlements concerning lead (which necessarily includes additional work purchasing, processing,
5 analyzing and testing consumer products; litigating matters that result in defaults, bankruptcies,
6 or dismissals; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's
7 Voluntary Compliance Program by acquiring products from companies, developing and
8 maintaining a case file, testing products from these companies, providing the test results and
9 supporting documentation to the companies, and offering guidance in implementing a self-testing
10 program for lead in dietary supplement products; (3) "GOT LEAD" PROGRAM (up to 5%):
11 maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products
12 that reach California consumers by providing access to free testing for lead in dietary supplement
13 products (Products submitted to the program are screened for ingredients which are suspected to
14 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory
15 for testing, and the results shared with the consumer that submitted the product); (4)
16 DONATION: from this settlement, a donation of \$5,000.00 to Center For Environmental Health
17 will be provided to address reducing toxic chemical exposures in California and following up
18 with the recipient to ensure the funds are utilized in a manner that is consistent with ERC's
19 mission and stated purpose of the Donation; (5) PUBLIC OUTREACH (up to 5%): public
20 outreach programs including maintaining ERC's blog, website, and social media accounts; (6)
21 SPECIAL PROJECTS (10-20%): projects including obtaining expert and legal opinions not
22 specific to any one case that are necessary to the continued private enforcement of Proposition
23 65 (7) SCHOLARSHIPS (up to 5%): scholarships for college students in California who have
24 been or are currently diagnosed with cancer or who are pursuing an environmental health science
25 major; and (8) PRODUCT DATABASE (up to 5%): maintaining a database with all products
26 sold to California consumers that ERC has tested for lead, cadmium, or arsenic.

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

4 **4.5** \$12,324.00 shall be distributed to Lozeau Drury LLP as reimbursement of
5 ERC's attorney's fees, while \$23,496.90 shall be distributed to ERC for its in-house legal fees.

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

15 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

1 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
2 confer period.

3 **5.3** In the event that USANA initiates or otherwise requests a modification under
4 Section 5.1, and the meet and confer process leads to a joint motion or application of the
5 Consent Judgment, ERC may seek its costs and reasonable attorney's fees in accordance with
6 California Code of Civil Procedure section 1021.5 for the time spent in the meet-and-confer
7 process and filing and arguing the motion or application.

8 **5.4** Where the meet-and-confer process does not lead to a joint motion or application
9 in support of a modification of the Consent Judgment, then either Party may seek judicial relief
10 on its own. ERC may seek its costs and reasonable attorney's fees in accordance with California
11 Code of Civil Procedure section 1021.5 for the time spent in the meet-and-confer process and
12 filing and arguing the motion or application.

13 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
14 **JUDGMENT**

15 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
16 this Consent Judgment.

17 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
18 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
19 inform USANA in a reasonably prompt manner of its test results, including information
20 sufficient to permit USANA to identify the Covered Products at issue. USANA shall, within
21 thirty days following such notice, provide ERC with testing information, from an independent
22 third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2, demonstrating
23 USANA's compliance with the Consent Judgment, if warranted. The Parties shall first attempt
24 to resolve the matter prior to ERC taking any further legal action.

25 **7. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
28 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,

1 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
2 application to Covered Products which are distributed or sold exclusively to consumers outside the
3 State of California.

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

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

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

24 **8.3** It is possible that other claims not known to the Parties arising out of the facts
25 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be
26 discovered. ERC on behalf of itself only, on one hand, and USANA, on the other hand,
27 acknowledge that this Consent Judgment is expressly intended to cover and include all such
28 claims up through the Effective Date, including all rights of action therefore. ERC and USANA

1 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown
2 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
3 claims. California Civil Code section 1542 reads as follows:

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

9 ERC on behalf of itself only, on the one hand, and USANA, on the other hand, acknowledge
10 and understand the significance and consequences of this specific waiver of California Civil
11 Code section 1542.

12 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
13 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
14 to lead in the Covered Products as set forth in the Notices and the Complaint.

15 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
16 environmental exposures arising under Proposition 65, nor shall it apply to any of USANA's
17 products other than the Covered Products.

18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **10. GOVERNING LAW**

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

24 **11. PROVISION OF NOTICE**

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

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

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

7 With a copy to:

8 MICHAEL R. LOZEAU
9 RICHARD T. DRURY
10 LOZEAU | DRURY LLP
11 410 12th Street, Suite 250
12 Oakland, CA 94607
13 Ph: 510-836-4200
14 Fax: 510-836-4205
15 Email: michael@lozeaudrury.com
16 richard@lozeaudrury.com
17 doug@lozeaudrury.com

18 **USANA HEALTH SCIENCES, INC.**

19 Mr. James H. Bramble, Chief Legal Officer
20 USANA Health Sciences, Inc.
21 3838 West Parkway Boulevard
22 Salt Lake City, Utah 84120-6336
23 Telephone: 801-954-7805
24 Email: james.bramble@us.usana.com

25 With a copy to:

26 ANN G. GRIMALDI
27 GRIMALDI LAW OFFICES
28 50 California Street, Suite 1500
San Francisco, CA 94111
Telephone: (415) 463-5186
Facsimile: (415) 358-4467
Email: ann.grimaldi@grimaldilawoffices.com

1 **12. COURT APPROVAL**

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

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

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

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

24 If a dispute arises with respect to either Party's compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet and confer in person or by telephone, and/or
26 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
27 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.
28

1 **16. ENFORCEMENT**

2 Subject to the provisions of Paragraph 15 above, any Party may, by motion or order to
3 show cause before the Superior Court of Alameda County, enforce the terms and conditions
4 contained in this Consent Judgment. In any action brought by a Party to enforce this Consent
5 Judgment, the Party may seek whatever fines, costs, penalties, or remedies as are provided by
6 law for failure to comply with the Consent Judgment. To the extent the failure to comply with
7 the Consent Judgment constitutes a violation of Proposition 65 or other laws, and subject to the
8 provisions of Paragraph 15 above, ERC shall not be limited to enforcement of this Consent
9 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
10 provided by law for failure to comply with Proposition 65 or other laws.

11 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

23 This Consent Judgment has come before the Court upon the request of the Parties. The
24 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

1 (2) Make the findings pursuant to California Health and Safety Code section
2 25249.7(1)(4), approve the Settlement, and approve this Consent Judgment.
3

4 **IT IS SO STIPULATED:**

5 Dated: 12/15/, 2016
6

ENVIRONMENTAL RESEARCH
CENTER, INC.

7 By: 
Chris Hopwood, Executive Director

8 Dated: _____, 2016
9

USANA HEALTH SCIENCES, INC.

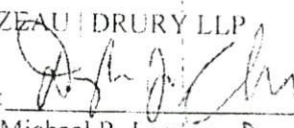
10 By: _____

11 Its: _____

12 **APPROVED AS TO FORM:**

13 Dated: 30 December, 2016
14

LOZEAU DRURY LLP

15 By: 
16 ~~Michael R. Lozeau~~ Douglas J. Chernak
17 Richard T. Drury
18 Attorneys for Plaintiff Environmental
19 Research Center, Inc.

20 Dated: _____, 2016
21

GRIMALDI LAW OFFICES

22 By: _____

23 Ann G. Grimaldi
24 Attorney for Defendant USANA Health
25 Sciences, Inc.
26
27
28

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

3
4 **IT IS SO STIPULATED:**

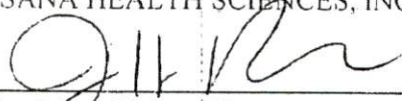
5 Dated: _____, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

6
7 By: _____
Chris Heptinstall, Executive Director

8 Dated: December 6, 2016

USANA HEALTH SCIENCES, INC.

9
10 
11 By: James H. Bramble
Its: CEO & Corporate Secretary

12 **APPROVED AS TO FORM:**

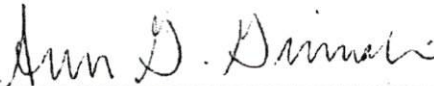
13 Dated: _____, 2016

LOZEAU | DRURY LLP

14
15 By: _____
16 Michael R. Lozeau
17 Richard T. Drury
Attorneys for Plaintiff Environmental
Research Center, Inc.

18
19 Dated: December 7, 2016

GRIMALDI LAW OFFICES

20
21 By: 
22 Ann G. Grimaldi
23 Attorney for Defendant USANA Health
24 Sciences, Inc.

25 ///

26 ///

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: March 28, 2017



Judge of the Superior Court

Victoria S. Kolakowski

EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
USANA Health Sciences, Inc.
3838 West Parkway Boulevard
Salt Lake City, UT 84120

Corporation Service Company
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
10 East South Temple, Suite 850
Salt Lake City, UT 84133

Corporation Service Company Which Will
Do Business in California as CSC-Lawyers
Incorporating Service
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA ELECTRONIC MAIL

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

VIA ELECTRONIC MAIL

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

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

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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

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

USANA Health Sciences, Inc.

VIA ELECTRONIC MAIL

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

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

1. **Usana Health Sciences Inc. Usana Nutrimeal Chocolate Whey- Lead**
2. **Usana Health Sciences Inc. Usana Fudge Delite - Lead**
3. **Usana Health Sciences Inc. Usana Nutrimeal Dutch Chocolate - Lead**
4. **Usana Health Sciences Inc. Usana Nutrimeal French Vanilla - Lead**
5. **Usana Health Sciences Inc. Usana Nutrimeal Wild Strawberry - Lead**
6. **Usana Health Sciences Inc. Usana Fibergy Plus - Lead**

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

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since February 19, 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 Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
February 19, 2016
Page 4

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 USANA Health Sciences, Inc. and its Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

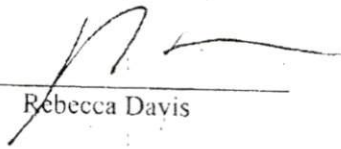
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by USANA Health Sciences, Inc.**

I, Rebecca Davis, declare:

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

Dated: February 19, 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 February 19, 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
USANA Health Sciences, Inc.
3838 West Parkway Boulevard
Salt Lake City, UT 84120

Corporation Service Company
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
10 East South Temple, Suite 850
Salt Lake City, UT 84133

Corporation Service Company Which Will
Do Business in California as CSC-Lawyers
Incorporating Service
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

On February 19, 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 February 19, 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

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

February 19, 2016

Page 7

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 February 19, 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 February 19, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Luis Obispo County 1035 Palm St. Room 450 San Luis Obispo, CA 93408	San Francisco City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
		District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	

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: February 19, 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.

Date: February 19, 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.

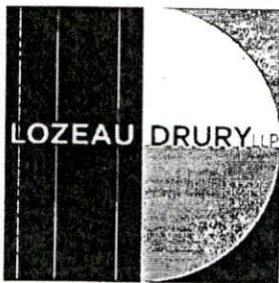
HISTORY

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

EXHIBIT B



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
USANA Health Sciences, Inc.
3838 West Parkway Boulevard
Salt Lake City, UT 84120

Corporation Service Company
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
10 East South Temple, Suite 850
Salt Lake City, UT 84133

Corporation Service Company Which Will
Do Business in California as CSC-Lawyers
Incorporating Service
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA ELECTRONIC MAIL

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

VIA ELECTRONIC MAIL

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th
Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

VIA ELECTRONIC MAIL

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

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

USANA Health Sciences, Inc.

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

1. **USANA Health Sciences Inc. Nutrimeal Free - Lead**
2. **USANA Health Sciences Inc. MySmartShake Booster Fibergy+ - Lead**
3. **USANA Health Sciences Inc. MySmartBar Dark Chocolate - Lead**
4. **USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base - Lead**
5. **MySmartShakeSystem (Soy,Cappuccino, Protein) - Lead**
 - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
 - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
 - c) **USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer**
6. **MySmartShakeSystem (Soy,Peach,Protein) - Lead**
 - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
 - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
 - c) **USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer**
7. **MySmartShakeSystem (Soy,Chocolate,Protein) - Lead**
 - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
 - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
 - c) **USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**
8. **MySmartShakeSystem (Whey,Chocolate,Protein) - Lead**
 - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
 - b) **USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base**
 - c) **USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**
9. **MySmartShakeSystem (Plant,Cappuccino, Protein) - Lead**
 - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
 - b) **USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
 - c) **USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer**
10. **MySmartShakeSystem (Plant,Orange,Protein) - Lead**
 - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
 - b) **USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**

- c) USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer
- 11. MySmartShakeSystem (Plant,Banana,Protein) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+
 - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer
- 12. MySmartShakeSystem (Plant,Peach,Protein) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+
 - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer
- 13. MySmartShakeSystem (Plant,Chocolate,Protein) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+
 - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer
- 14. MySmartShakeSystem (Soy,Cappuccino,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer
- 15. MySmartShakeSystem (Soy,Orange,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer
- 16. MySmartShakeSystem (Soy,Banana,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer
- 17. MySmartShakeSystem (Soy,Peach,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer
- 18. MySmartShakeSystem (Soy,Chocolate,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer

19. MySmartShakeSystem (Whey,Cappuccino, Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer
20. MySmartShakeSystem (Whey,Orange,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer
21. MySmartShakeSystem (Whey,Banana,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer
22. MySmartShakeSystem (Whey,Peach,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer
23. MySmartShakeSystem (Whey,Chocolate,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer
24. MySmartShakeSystem (Plant,Cappuccino, Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer
25. MySmartShakeSystem (Plant,Orange,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer
26. MySmartShakeSystem (Plant,Banana,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer
27. MySmartShakeSystem (Plant,Peach,Fiber) - Lead
 - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
 - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
 - c) USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer

28. MySmartShakeSystem (Plant,Chocolate,Fiber) - Lead

- a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+
- b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base
- c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer

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

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

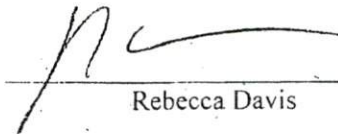
The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since October 14, 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 Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
October 14, 2016
Page 7

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 USANA Health Sciences, Inc. and its Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by USANA Health Sciences, Inc.**

I, Rebecca Davis, declare:

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

Dated: October 14, 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 October 14, 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
USANA Health Sciences, Inc.
3838 West Parkway Boulevard
Salt Lake City, UT 84120

Corporation Service Company
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
10 East South Temple, Suite 850
Salt Lake City, UT 84133

Corporation Service Company Which Will
Do Business in California as CSC-Lawyers
Incorporating Service
(USANA Health Sciences, Inc.'s
Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

On October 14, 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 October 14, 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

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

October 14, 2016

Page 10

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

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

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

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

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

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

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

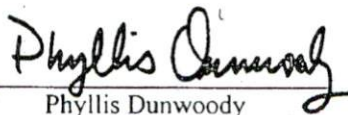
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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

On October 14, 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 October 14, 2016, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

October 14, 2016

Page 11

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, Suite 202
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

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San Diego City Attorney's
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San Diego, CA 92101

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

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

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

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

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations

(<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

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

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

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

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

The notice is reproduced here:

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Date: October 14, 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: October 14, 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