

1 Philip T. Emmons (SBN 124902)
2 Law Office of Philip T. Emmons
3 1990 N. California Blvd., 8th Floor
4 Walnut Creek, CA 94596
5 T: (925) 287-6436
6 F: (925) 287-6437

7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 DANIEL S. SILVERMAN SBN 137864
10 Venable LLP
11 2049 Century Park East, Suite 2300
12 Los Angeles, CA 90067
13 Tel: (310) 229-0373
14 Fax: (310) 229-9901
15 Email: dssilverman@venable.com

16 Attorney for Defendants
17 IQ FORMULATIONS, LLC.
18 IQ FORMULATIONS, LLC. dba METABOLIC
19 NUTRITION

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

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

25 Plaintiff,

26 v.

27 IQ FORMULATIONS, LLC.; IQ
28 FORMULATIONS, LLC. DBA
METABOLIC NUTRITION; and DOES 1-
50, inclusive,

Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

JUL 12 2017

CLERK OF THE SUPERIOR COURT

By ROLANDA ESTRADA Deputy

CASE NO. RG16818883

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 9, 2016

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On June 9, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
4 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against IQ FORMULATIONS, LLC., IQ FORMULATIONS, LLC. dba METABOLIC
7 NUTRITION (collectively “IQ FORMULATIONS”), and DOES 1-50. In this action, ERC
8 alleges that a number of products manufactured, distributed or sold by IQ FORMULATIONS
9 contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and
10 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
11 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
12 collectively as “Covered Products”) are:

- 13 1) Metabolic Nutrition P.S.P. Pre-Workout Blue Raspberry - Lead
- 14 2) Metabolic Nutrition P.S.P. Pre-Workout Watermelon - Lead
- 15 3) Metabolic Nutrition P.S.P. Pre-Workout Fruit Punch - Lead
- 16 4) Metabolic Nutrition ProtiZyme Butter Pecan Cookie - Lead
- 17 5) Metabolic Nutrition ProtiZyme Banana Creme - Lead
- 18 6) Metabolic Nutrition ProtiZyme Peanut Butter Cookie - Lead
- 19 7) Metabolic Nutrition ProtiZyme Chocolate Cake – Lead, Cadmium
- 20 8) Metabolic Nutrition ProtiZyme Strawberry Creme - Lead
- 21 9) Metabolic Nutrition MuscLean Chocolate Milkshake – Lead, Cadmium
- 22 10) Metabolic Nutrition MuscLean Strawberry Milkshake - Lead
- 23 11) Metabolic Nutrition MuscLean Peanut Butter Milkshake - Lead
- 24 12) Metabolic Nutrition MuscLean Vanilla Milkshake – Lead

25 **1.2** ERC and IQ FORMULATIONS are hereinafter referred to individually as a
26 “Party” or collectively as the “Parties.”
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1 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
2 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
3 and toxic chemicals, facilitating a safe environment for consumers and employees, and
4 encouraging corporate responsibility.

5 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
6 business entity each of which has employed ten or more persons at all times relevant to this action,
7 and qualifies as a "person in the course of business" within the meaning of Proposition 65. IQ
8 FORMULATIONS manufactures, distributes and sells the Covered Products.

9 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation
10 dated March 30, 2016, that was served on the California Attorney General, other public
11 enforcers, and IQ FORMULATIONS ("Notice"). A true and correct copy of the Notice is
12 attached as Exhibit A and is hereby incorporated by reference. More than 60 days have passed
13 since the Notice was mailed and uploaded to the Attorney General's website, and no designated
14 governmental entity has filed a complaint against IQ FORMULATIONS with regard to the
15 Covered Products or the alleged violations.

16 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
17 persons in California to lead and/or cadmium without first providing clear and reasonable
18 warnings in violation of California Health and Safety Code section 25249.6. IQ
19 FORMULATIONS denies all material allegations contained in the Notice and Complaint.

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

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

6 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
7 a Judgment by this Court. The Compliance Date is one hundred fifty (150) days after the
8 Effective Date.

9 **2. JURISDICTION AND VENUE**

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

17 **3. INJUNCTIVE RELIEF AND WARNINGS**

18 3.1 Beginning on the Compliance Date, IQ FORMULATIONS shall be permanently
19 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
20 California", or directly selling in the State of California, any Covered Product which exposes a
21 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per day of lead or
22 "Daily Cadmium Exposure Level" of more than 4.10 micrograms per day of cadmium when
23 the maximum suggested dose is taken as directed on the Covered Product's label, unless it
24 meets the warning requirements under Section 3.2. This Section shall not apply to any IQ
25 FORMULATIONS' product that was distributed into the State of California prior to the
26 Compliance Date.

1 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
2 of California" shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that IQ FORMULATIONS knows will
4 sell the Covered Product in California.

5 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
6 Level" and "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be
7 calculated using the following formula: micrograms of lead or cadmium per gram of product
8 minus the amounts of lead listed in Table 3.1.2 below (for lead test results only), multiplied by
9 grams of product per serving of the product (using the largest serving size appearing on the
10 product label), multiplied by servings of the product per day (using the largest number of
11 servings in a recommended dosage appearing on the product label), which equals micrograms
12 of lead or cadmium exposure per day.

13 **TABLE 3.1.2**

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (Elemental)	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 microgram/gram

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25 If, at any time after the Compliance Date, ERC tests a Covered Product that does not
26 contain a warning described in Section 3.2, and the test results indicate that the Daily Lead
27 Exposure Level is greater than 0.5 micrograms per day, IQ FORMULATIONS agrees to
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1 confidentially supply to ERC, within 30 days of ERC's written request, a list of ingredients,
2 including the percentage of each ingredient ("Ingredient List"), of that particular covered product
3 so that ERC may be able to calculate the daily exposure based on the allowances in the table
4 above.

5 In the event that a dispute arises with respect to compliance with the terms of this
6 Consent Judgment as to any contribution from naturally occurring lead levels under this Section,
7 the Parties shall meet and confer as set forth in Section 15.

8 3.2 Clear and Reasonable Warnings

9 IFIQ FORMULATIONS is required to provide a warning pursuant to Section 3.1, one of the
10 following warnings must be utilized ("Warning"):

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

13 or

14 **WARNING:** Consuming this product can expose you to chemicals including lead and
15 cadmium which is are known to the State of California to cause [cancer and] birth defects
16 or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

17 IFIQ FORMULATIONS shall use the phrase "cancer and" in the Warning only if the maximum daily
18 dose recommended on the label contains more than 15 micrograms of lead as determined pursuant
19 to the quality control methodology set forth in Section 3.4. As identified in the brackets, the warning
20 shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the
21 Covered Products.

22 The Warning shall be securely affixed to or printed upon the container or label of each
23 Covered Product. In addition, for Covered Products sold over IFIQ FORMULATIONS' website,
24 the Warning or a hyperlink using the word "WARNING" that links to the warning, shall appear
25 in one of the following locations:

- 26 (i) the checkout page when a California delivery address is indicated for any purchase of
27 any Covered Product, or
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1 (ii) the product display page.

2 The Warning shall be at least the same size as the largest of any other health or safety
3 warnings also appearing on its website or on the label or container of IQ FORMULATIONS'
4 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
5 statements contradicting or conflicting with the Warning shall accompany the Warning.

6 IQ FORMULATIONS must display the above Warning with such conspicuousness, as
7 compared with other words, statements, design of the label, container, or on its website, as
8 applicable, to render the Warning likely to be read and understood by an ordinary individual under
9 customary conditions of purchase or use of the product.

10 **4. SETTLEMENT PAYMENT**

11 4.1 IQ FORMULATIONS is experiencing severe financial hardship and is entering
12 into this Consent Judgment to avoid prolonged and costly litigation. In order to be able to resolve
13 the litigation, due to its severe financial hardship, IQ FORMULATIONS requires that the
14 settlement payment be made over eight (8) months. To that end, in full satisfaction of all potential
15 civil penalties, payment in lieu of civil penalties, attorney's fees, and costs, IQ FORMULATIONS
16 shall make a total payment of \$60,000.00 ("Total Settlement Amount") according to the following
17 payment schedule ("Due Dates"):

- 18 • Payment 1 - \$7,500.00 within 5 days of the effective date
- 19 • Payment 2 - \$7,500.00 within 35 days of the effective date
- 20 • Payment 3 - \$7,500.00 within 65 days of the effective date
- 21 • Payment 4 - \$7,500.00 within 95 days of the effective date
- 22 • Payment 5 - \$7,500.00 within 125 days of the effective date
- 23 • Payment 6 - \$7,500.00 within 155 days of the effective date
- 24 • Payment 7 - \$7,500.00 within 185 days of the effective date
- 25 • Payment 8 - \$7,500.00 within 215 days of the effective date

26 4.2 IQ FORMULATIONS shall make these payments by wire transfer to ERC's
27 escrow account, for which ERC will give IQ FORMULATIONS the necessary account
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1 information. The Total Settlement Amount shall be apportioned as follows:

2 4.3 \$7,342.75 shall be considered a civil penalty pursuant to California Health and
3 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$5,507.06) of the civil penalty to the
4 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
5 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
6 Code §25249.12(c). ERC will retain the remaining 25% (\$1,835.69) of the civil penalty.

7 4.4 \$5,609.48 shall be distributed to ERC as reimbursement to ERC for reasonable
8 costs incurred in bringing this action.

9 4.5 \$5,507.06 shall be distributed to ERC as an Additional Settlement Payment
10 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
11 and 3204. ERC will utilize the ASP for activities that address Proposition 65 enforcement and
12 monitoring in other matters. These activities are detailed below and support ERC's
13 overarching goal of reducing and/or eliminating Proposition 65-listed chemicals in dietary
14 supplement products in California. ERC's activities have had, and will continue to have, a
15 direct and primary effect within the State of California because California consumers will be
16 benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in dietary
17 supplements and/or by providing clear and reasonable warnings to California consumers prior
18 to ingestion of the products.

19 4.6 Based on a review of past years' actual budgets, ERC is providing the following
20 list of activities ERC engages in to protect California consumers through Proposition 65 citizen
21 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
22 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
23 supplement products that may contain lead [and/or cadmium] [and/or arsenic] and are sold to
24 California consumers. This work includes continued monitoring and enforcement of past
25 consent judgments and settlements to ensure companies are in compliance with their
26 obligations thereunder, with a specific focus on those judgments and settlements concerning
27 lead and/or cadmium. This work also includes investigation of new companies that ERC does
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1 not obtain any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE
2 PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring
3 products from companies, developing and maintaining a case file, testing products from these
4 companies, providing the test results and supporting documentation to the companies, and
5 offering guidance in warning or implementing a self-testing program for lead and/or cadmium
6 in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining
7 ERC's "Got Lead?" Program which reduces the numbers of contaminated products that reach
8 California consumers by providing access to free testing for lead in dietary supplement
9 products (Products submitted to the program are screened for ingredients which are suspected
10 to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified
11 laboratory for testing, and the results shared with the consumer that submitted the product).

12 ERC shall be fully accountable in that it will maintain adequate records to document
13 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
14 are being spent only for the proper, designated purposes described in this Consent Judgment.
15 ERC shall provide the Attorney General, within thirty days of any request, copies of
16 documentation demonstrating how such funds have been spent.

17 4.7 \$18,637.50 shall be distributed to the Law Office of Philip T. Emmons as
18 reimbursement of ERC's attorney's fees, while \$22,903.21 shall be distributed to ERC for its
19 in-house legal fees.

20 4.8 In the event that IQ FORMULATIONS fails to remit any of the payments owed
21 under Section 4 of this Consent Judgment on or before their respective Due Dates, IQ
22 FORMULATIONS shall be deemed to be in material breach of its obligations under this
23 Consent Judgment. ERC shall provide written notice of the delinquency to IQ
24 FORMULATIONS via electronic mail. If IQ FORMULATIONS fails to deliver the delinquent
25 payment within fifteen (15) days from the written notice, the Total Settlement Amount shall
26 become immediately due and payable and shall accrue interest at the statutory judgment
27 interest rate provided in the Code of Civil Procedure section 685.010. Additionally, IQ
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1 FORMULATIONS agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
2 collect the payment due under this Consent Judgment.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
5 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
6 modified consent judgment.

7 **5.2** If either party seeks to modify this Consent Judgment under Section 5.1
8 ("noticing party"), then the noticing party must provide written notice to the other party
9 ("receiving party") of its intent ("Notice of Intent"). If the receiving party seeks to meet and
10 confer regarding the proposed modification in the Notice of Intent, then it must provide written
11 notice to the noticing party within thirty (30) days of receiving the Notice of Intent. If the
12 receiving party notifies the noticing party in a timely manner of its intent to meet and confer,
13 then the Parties shall meet and confer in good faith as required in this Section 5.2. If the
14 receiving party does not provide timely notice to the noticing party of its intent to meet and
15 confer under this Section 5.2, then the noticing party shall be entitled to seek Court approval of
16 the modification requested in its Notice of Intent and the receiving Party shall not be entitled to
17 object to the requested modification. If the receiving party does provide timely notice to the
18 noticing party of its intent to meet and confer under this Section 5.2, the Parties shall meet in
19 person or via telephone within thirty (30) days of the receiving party's notification of its intent
20 to meet and confer. Within thirty days of such meeting, if the receiving party disputes the
21 proposed modification, the receiving party shall provide to the noticing party a written basis for
22 its position. The Parties shall continue to meet and confer for an additional thirty (30) days in
23 an effort to resolve any remaining disputes. Should it become necessary, the Parties may agree
24 in writing to different deadlines for the meet-and-confer period.

25 **5.3** In the event that IQ FORMULATIONS initiates or otherwise requests a
26 modification under Section 5.1, and the meet and confer process leads to a joint motion or
27 application of the Consent Judgment, IQ FORMULATIONS shall reimburse ERC its costs and
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1 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
2 arguing the motion or application.

3 **5.4** If the meet-and-confer process does not lead to a joint motion or application in
4 support of a modification of the Consent Judgment, or if the receiving party does not agree to
5 the noticing party's requested modification under section 5.1, then either Party may seek
6 judicial relief on its own. In that event, the party seeking judicial relief shall bear the burden of
7 proving, by a preponderance of the evidence, that it meets the grounds for the requested relief.

8 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
9 **JUDGMENT**

10 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
11 this Consent Judgment.

12 **6.2** If ERC alleges IQ FORMULATIONS is not complying with this Consent
13 Judgment, then ERC shall inform IQ FORMULATIONS in a reasonably prompt manner of its
14 test results, including information sufficient to permit IQ FORMULATIONS to identify the
15 Covered Products at issue. IQ FORMULATIONS shall, within thirty days following such
16 notice, provide ERC with testing information demonstrating IQ FORMULATIONS' compliance
17 with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter
18 prior to ERC taking any further legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

2 **8.1 This Consent Judgment is a full, final, and binding resolution between ERC,**
3 **on behalf of itself and in the public interest, and IQ FORMULATIONS and its respective**
4 **officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,**
5 **suppliers, franchisees, licensees, customers (not including private label customers of IQ**
6 **FORMULATIONS), distributors, wholesalers, retailers, and all other upstream and**
7 **downstream entities in the distribution chain of any Covered Product, and the predecessors,**
8 **successors and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of**
9 **itself and its respective owners, principals, shareholders, officers, directors, employees, agents,**
10 **affiliates, partners, subsidiaries, servants, administrators, successors, assigns, and attorneys**
11 **(collectively "ERC Releasees"), and on behalf of the general in the public interest, 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 and/or cadmium up to**
17 **and including the Compliance Date. Compliance with the terms of this Consent Judgment shall**
18 **be deemed to constitute compliance with Proposition 65 by any Released Parties regarding**
19 **alleged exposures to lead or cadmium in the Covered Products manufactured on or after the**
20 **Compliance Date.**

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

1 **8.3** It is possible that other claims not known to the Parties arising out of or relating
2 to the Covered Products will develop or be discovered. ERC on behalf of itself only, on one
3 hand, and IQ FORMULATIONS, on the other hand, acknowledge that this Consent Judgment
4 is expressly intended to cover and include all such claims up through the Compliance Date,
5 including all rights of action therefor. ERC and IQ FORMULATIONS acknowledge that the
6 claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless
7 waive California Civil Code section 1542 as to any such unknown claims. California Civil
8 Code section 1542 reads as follows:

9 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
10 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
11 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
12 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
13 **OR HER SETTLEMENT WITH THE DEBTOR.**

14 ERC on behalf of itself only, on the one hand, and IQ FORMULATIONS, on the other hand,
15 acknowledge and understand the significance and consequences of this specific waiver of
16 California Civil Code section 1542.

17 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
18 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
19 and/or cadmium in the Covered Products as set forth in the Notice and the Complaint.

20 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
21 environmental exposures arising under Proposition 65, nor shall it apply to any of IQ
22 FORMULATIONS' products other than the Covered Products.

23 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

26 **10. GOVERNING LAW**

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

1 **11. PROVISION OF NOTICE**

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

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

6 Chris Heptinstall, Executive Director, Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108
9 Tel: (619) 500-3090
10 Email: chris_erc501c3@yahoo.com

11 With a copy to:

12 Philip T. Emmons
13 Law Office of Philip T. Emmons
14 1990 N. California Blvd., 8th Floor
15 Walnut Creek, CA 94596
16 T: (925) 287-6436
17 F: (925) 287-6437

18 **IQ FORMULATIONS, LLC.**

19 **IQ FORMULATIONS, LLC. dba METABOLIC NUTRITION:**

20 Jay Cohen, CEO
21 10151 NW 67th Street
22 Tamarac, FL. 33321

23 With a copy to:

24 Daniel S. Silverman
25 Venable LLP
26 2049 Century Park East, Suite 2300
27 Los Angeles, CA 90067
28 Tel: (310) 229-0373
29 Fax: (310) 229-9901
30 Email: dssilverman@venable.com

31 **12. COURT APPROVAL**

32 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
33 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
34 Consent Judgment.

1 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use reasonable, good faith efforts to resolve the concern in a timely manner,
3 and if possible prior to the hearing on the motion.

4 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
5 void and have no force or effect.

6 **13. EXECUTION AND COUNTERPARTS**

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

10 **14. DRAFTING**

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

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

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

24 **16. ENFORCEMENT**

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

6 **17. ENTIRE AGREEMENT, AUTHORIZATION**

7 **17.1** This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter herein, and any and all
9 prior discussions, negotiations, commitments and understandings related hereto. No
10 representations, oral or otherwise, express or implied, other than those contained herein have
11 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
12 herein, shall be deemed to exist or to bind any Party.

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
15 explicitly provided herein, each Party shall bear its own fees and costs.

16 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
17 **CONSENT JUDGMENT**

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

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

24 (2) Make the findings pursuant to California Health and Safety Code section
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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IT IS SO STIPULATED:

Dated: 4/27, 2017

Dated: 4/28/17, 2017

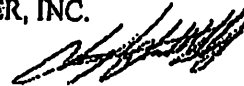
Dated: 4/28/17, 2017

APPROVED AS TO FORM:


Dated: 4/28, 2017

Dated: 4/28, 2017


ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director


IQ FORMULATIONS, LLC.

By: 
Jay Cohen, CEO


IQ FORMULATIONS, LLC. dba
METABOLIC NUTRITION

By: 
Jay Cohen, CEO

LAW OFFICE OF PHILIP T. EMMONS

By: 
Philip T. Emmons
Attorney for Plaintiff Environmental
Research Center, Inc.

VENABLE, LLP

By: 
Daniel S. Silverman
Attorney for Defendants
IQ Formulations, LLC. and
IQ Formulations, LLC. dba
Metabolic Nutrition

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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: JUL 12 2017, 2017

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

EXHIBIT A

LAW OFFICE OF
PHILIP T. EMMONS
1990 N. California Blvd., 8th Floor
Walnut Creek, CA 94596
Tel: (925) 287-6436

March 30, 2016

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

VIA CERTIFIED MAIL

Current President or CEO
IQ Formulations, LLC.
10151 NW 67th Street
Tamarac, FL 33321

Current President or CEO
IQ Formulations, LLC. dba
Metabolic Nutrition
10151 NW 67th Street
Tamarac, FL 33321

Current President or CEO
IQ Formulations, LLC.
523 Sawgrass Corporate Parkway
Fort Lauderdale, FL 33325

Current President or CEO
IQ Formulations, LLC. dba
Metabolic Nutrition
523 Sawgrass Corporate Parkway
Fort Lauderdale, FL 33325

Current President or CEO
IQ Formulations, LLC.
3737 Condor Court
Weston, FL 33331

Current President or CEO
IQ Formulations, LLC. dba
Metabolic Nutrition
3737 Condor Court
Weston, FL 33331

VIA CERTIFIED MAIL

Alan S. Rosenberg, Esquire
(IQ Formulations, LLC.'s Registered
Agent for Service of Process)
Koleos Rosenberg P.A.
Amtrust Bank Building
8211 West Broward Boulevard, PH4
Plantation, FL 33324

Samyr Paredes
(IQ Formulations, LLC.'s Registered
Agent for Service of Process)
10151 NW 67th Street
Tamarac, FL 33321

VIA ELECTRONIC MAIL

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

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

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

March 30, 2016

Page 2

VIA ELECTRONIC MAIL

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

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 Drive
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 ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

IQ Formulations, LLC.

IQ Formulations, LLC. dba Metabolic Nutrition

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

- 1. Metabolic Nutrition P.S.P. Pre-Workout Blue Raspberry - Lead**
- 2. Metabolic Nutrition P.S.P. Pre-Workout Watermelon - Lead**
- 3. Metabolic Nutrition P.S.P. Pre-Workout Fruit Punch - Lead**
- 4. Metabolic Nutrition ProtiZyme Butter Pecan Cookie - Lead**
- 5. Metabolic Nutrition ProtiZyme Banana Creme - Lead**
- 6. Metabolic Nutrition ProtiZyme Peanut Butter Cookie - Lead**
- 7. Metabolic Nutrition ProtiZyme Chocolate Cake – Lead, Cadmium**
- 8. Metabolic Nutrition ProtiZyme Strawberry Creme - Lead**
- 9. Metabolic Nutrition MuscLean Chocolate Milkshake – Lead, Cadmium**
- 10. Metabolic Nutrition MuscLean Strawberry Milkshake - Lead**
- 11. Metabolic Nutrition MuscLean Peanut Butter Milkshake - Lead**
- 12. Metabolic Nutrition MuscLean Vanilla Milkshake – Lead**

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

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

March 30, 2016

Page 4


Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 30, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

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

Sincerely,


Philip T. Emmons, Esq.

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to IQ Formulations, LLC., IQ Formulations, LLC. dba Metabolic Nutrition, and their Registered Agents for Service of Process only)

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

March 30, 2016

Page 5

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations IQ Formulations, LLC. and IQ Formulations, LLC. dba Metabolic Nutrition

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Philip T. Emmons, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the 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 alleged exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultants, and on all 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 the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: March 30, 2016


Philip T. Emmons

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 March 30, 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 President or CEO
IQ Formulations, LLC.
10151 NW 67th Street
Tamarac, FL 33321

Current President or CEO
IQ Formulations, LLC.
3737 Condor Court
Weston, FL 33331

Current President or CEO
IQ Formulations, LLC. dba
Metabolic Nutrition
10151 NW 67th Street
Tamarac, FL 33321

Current President or CEO
IQ Formulations, LLC. dba
Metabolic Nutrition
3737 Condor Court
Weston, FL 33331

Current President or CEO
IQ Formulations, LLC.
523 Sawgrass Corporate Parkway
Fort Lauderdale, FL 33325

Alan S. Rosenberg, Esquire
(IQ Formulations, LLC.’s Registered Agent for Service of Process)
Koleos Rosenberg P.A.
Amtrust Bank Building
8211 West Broward Boulevard, PH4
Plantation, FL 33324

Current President or CEO
IQ Formulations, LLC. dba
Metabolic Nutrition
523 Sawgrass Corporate Parkway
Fort Lauderdale, FL 33325

Samyr Paredes
(IQ Formulations, LLC.’s Registered Agent for Service of Process)
10151 NW 67th Street
Tamarac, FL 33321

On March 30, 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 March 30, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

March 30, 2016

Page 7

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

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

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

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

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

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

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

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

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

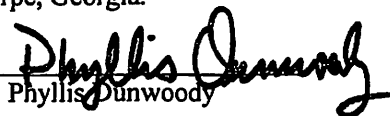
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

On March 30, 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 March 30, 2016, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

March 30, 2016

Page 8

Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

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

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

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

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

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

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

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

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

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

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

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

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

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

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

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

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

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

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

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

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

Appendix A

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

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

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

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

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

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

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

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

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

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

The notice is reproduced here:

Date: March 30, 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: March 30, 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