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 12 DESIGNER PROTEIN, LLC

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

FILED
 ALAMEDA COUNTY
 AUG 15 2017
 CLERK OF THE SUPERIOR COURT
 By
 Deputy

15 ENVIRONMENTAL RESEARCH
 16 CENTER, INC. a California non profit
 17 corporation,
 18 Plaintiff,
 19 v.
 20 DESIGNER PROTEIN, LLC, and DOES 1-
 21 100,
 22 Defendants.

CASE NO. RG17851422
STIPULATED CONSENT JUDGMENT
 Health & Safety Code § 25249.5 *et seq.*

24 **1. INTRODUCTION**

25 1.1 On February 28, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a
 26 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
 27 filing a Complaint for Injunctive and Declaratory Relief, and Civil Penalties pursuant to the
 28 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),

1 against Designer Protein, LLC, a California company (“Designer Protein” or “Defendant”) and
2 Does 1-100. ERC will file a First Amended Complaint (the operative Complaint referred to
3 hereinafter as the “Complaint”) promptly upon expiration of the 60 day notice period for the June
4 9, 2017 Sixty Day Notice of Violation. ERC alleges that various products manufactured,
5 distributed or sold by Designer Protein contain lead and/or cadmium, chemicals listed under
6 Proposition 65, and that the products expose consumers to one or both of these chemicals at a
7 level requiring a Proposition 65 warning. These products, identified in ERC’s Sixty-Day Notices
8 of Violation dated July 29, 2016, November 14, 2016, and June 9, 2017 (collectively referred to as
9 the “Notices” and individually as a “Notice”) and the Complaint, and the chemical(s) for which
10 the products are identified in the Notices and the Complaint, are identified in Exhibit A and are
11 referred to collectively as the “Covered Products.”

12 **1.2** ERC and Designer Protein are hereinafter referred to individually as a “Party” or
13 collectively as the “Parties.”

14 **1.3** ERC is a 501 (c)(3) California non profit corporation.

15 **1.4** Designer Protein has employed ten or more persons at all times relevant to this action,
16 and it qualifies as a “person in the course of business” within the meaning of Proposition 65.

17 **1.5** The Complaint is based on allegations contained in ERC’s Notices, which were
18 served on the California Attorney General, other public enforcers, and Designer Protein. True and
19 correct copies of the Notices are attached as Exhibit B and are hereby incorporated by reference.
20 By the time the Motion to Approve is heard, more than 60 days will have passed since the Notices
21 were served.

22 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
23 persons in California to lead and/or cadmium without first providing clear and reasonable
24 warnings in violation of California Health and Safety Code section 25249.6.

25 **1.7** Designer Protein denies all material allegations contained in the Notices and the
26 Complaint, and Designer Protein maintains that it has complied with Proposition 65 with respect
27 to the Covered Products.
28

1 **1.8** The Parties have entered into this Stipulated Consent Judgment (“Consent
2 Judgment”) in order to settle, compromise, and resolve disputed claims and thus avoid prolonged
3 and costly litigation. Nothing in this Consent Judgment shall constitute or be construed as an
4 admission by any of the Parties, or by any of their respective officers, directors, shareholders,
5 employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers,
6 suppliers, distributors, wholesalers, or retailers. Except for the representations made above,
7 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
8 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as
9 an admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
10 purpose.

11 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
13 other or future legal proceeding unrelated to these proceedings.

14 **1.10** The Execution Date is the date on which it is fully signed by the Parties. The
15 Effective Date of this Consent Judgment is the date on which it is entered as a judgment by this
16 Court. The Compliance Date is one hundred eighty (180) days after the Effective Date (“the
17 Compliance Date”).

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 over
22 Designer Protein as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
23 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
24 claims up through and including the Compliance Date which were or could have been asserted in this
25 action based on the facts alleged in the Notices and Complaint.

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

27 **3.1** Any Covered Products that are manufactured on and after the Compliance Date that
28 Designer Protein thereafter distributes into California, or sells in the State of California, shall

1 either qualify as a Reformulated Covered Product under Section 3.3 or comply with the warning
2 requirements of Section 3.2. "Distributes into California" shall mean to directly ship a Covered
3 Product into California for sale in California or to sell a Covered Product to a distributor that
4 Designer Protein knows or has reason to know will sell the Covered Product in California.

5 **3.1.1** A Covered Product for which only lead is identified in any of the Notices is
6 not required to comply with any injunctive terms relating to cadmium in Section 3. A Covered
7 Product for which only cadmium is identified in any of the Notices is not required to comply with
8 any injunctive terms relating to lead in Section 3. Nothing in this Section affects Designer
9 Protein's duty to comply with Proposition 65 and its supporting regulations.

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

17 If there are no servings per day listed on any of the Covered Products, then the
18 servings of the product per day for purposes of the formula in this Section 3.1.3 shall be calculated
19 as one serving per day.

20 **3.2 Clear and Reasonable Warnings**

21 **3.2.1** If Designer Protein is required to provide a warning pursuant to Section 3.1,
22 one of the following two warning statements under in this Section 3.2.1 shall be utilized (the
23 "Warning").

24 **3.2.1.1 Option 1**

25 **WARNING:** This product contains a chemical [chemicals] known to the
26 State of California to cause [cancer and] birth defects or other reproductive
27 harm.
28

1 The bracketed term “chemicals” must be used in place of “a chemical” in the Warning if the
2 Covered Product requires a warning for both lead and cadmium but the use of the term “chemicals”
3 is otherwise optional. The bracketed term “cancer and” must be used if a Covered Product contains
4 more than 15 micrograms of lead as determined pursuant to Section 3.4.

5 3.2.1.2 Option 2

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

9 The Warning must mention either lead or cadmium, as applicable, if a warning is only
10 required for one of the chemicals. If Designer Protein provides a warning for both lead and
11 cadmium, then the term “chemicals including” and at least one of the bracketed terms “lead” and
12 “cadmium” shall be used. The Warning shall be modified additionally to include a warning for
13 cancer in a manner that complies with 27 Cal. Code Regs. § 25607.2 if a Covered Product contains
14 more than 15 micrograms of lead as determined pursuant to Section 3.4.

15 3.2.2 The Warning shall be securely affixed to or printed upon the container or
16 label of each Covered Product. In addition, for any Covered Product sold by Designer Protein over
17 the internet, the Warning, or a hyperlink using the word “WARNING” that links to the Warning,
18 shall appear in one of the following locations: (i) the checkout page when a California delivery
19 address is indicated for any purchase of any Covered Product; or (ii) the product display page. An
20 asterisk or other identifying method must be utilized to identify which products on the checkout
21 page are subject to the Warning.

22 The Warning shall be at least the same size as the largest of any other health or safety
23 warnings appearing on the label or container of the Covered Product packaging and the word
24 “WARNING” shall be in all capital letters and in bold print. No other statements discussing
25 Proposition 65 or lead or cadmium that contradict or conflict with the warning shall accompany the
26 Warning on the container or label.

27 Designer Protein must display the Warning with such conspicuousness, as compared with
28 other words, statements, design of the label or container, as applicable, to render the Warning likely

1 to be read and understood by an ordinary individual under customary conditions of purchase or use
2 of the product.

3 **3.3 Reformulated Covered Products**

4 **3.3.1** With respect to Covered Products identified in a Notice for lead, a
5 Reformulated Covered Product is one for which the Daily Lead Exposure Level is no greater than 0.5
6 micrograms ("mcg") of lead per day as determined by the quality control methodology described in
7 Section 3.4 after subtracting the amount of lead deemed to be "naturally occurring" (for purposes of
8 this Consent Judgment only) in each ingredient listed in Table 3.3.3 below. With respect to Covered
9 Products identified in a Notice for cadmium, a Reformulated Covered Product is one for which the
10 Daily Cadmium Exposure Level is no greater than 4.1mcg of cadmium per day as determined by the
11 quality control methodology described in Section 3.4.

12 **3.3.2** The amount of lead deemed "naturally occurring" in each of the Covered
13 Products is the sum of the amounts of "naturally occurring" lead supplied by the quantity of each
14 ingredient listed in Table 3.3.3 that is present in each Covered Product. For each ingredient listed in
15 Table 3.3.3, the amount of lead deemed "naturally occurring" is listed in micrograms of "naturally
16 occurring" lead per gram of the ingredient that is contained in the Covered Product. If Designer
17 Protein seeks to utilize the "naturally occurring" allowance in Table 3.3.3 for any of the Covered
18 Products, within thirty (30) days of ERC's written request, which ERC may issue no earlier than the
19 Compliance Date, Designer Protein must supply ERC with the amount of each ingredient in each
20 Covered Product for which the "naturally occurring" allowance is being requested. Designer Protein
21 is entitled to submit this information to ERC confidentially.

22 **Table 3.3.3**

Ingredient	Amount of lead (Pb) per gram of ingredient deemed naturally occurring
Calcium (elemental)	0.8 mcg Pb per gram of elemental calcium
Ferrous Fumarate	0.4 mcg Pb per gram of ferrous fumarate
Zinc Oxide	8.0 mcg Pb per gram of zinc oxide
Magnesium Oxide	0.4 mcg Pb per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg Pb per gram of magnesium carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of magnesium hydroxide

Zinc Gluconate	0.8 mcg Pb per gram of zinc gluconate
Potassium Chloride	1.1 mcg Pb per gram of potassium chloride
Cocoa powder	1.0 mcg Pb per gram of cocoa powder

3.4 Testing and Quality Control Methodology

3.4.1 Prior to Designer Protein's first distribution or sale of Covered Products manufactured after the Compliance Date, and at least once a year thereafter for three consecutive years, Designer Protein shall arrange for testing for lead and cadmium, as applicable, of three (3) randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user that Designer Protein sells or Distributes into California. The testing requirement does not apply to any of the Covered Products for which Designer Protein has provided the warning specified in Section 3.2. If tests conducted pursuant to this Section demonstrate that no warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, Designer Protein changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products such that the change or reformulation is reasonably likely to affect lead or cadmium levels, then Designer Protein shall test that Covered Product annually for at least two (2) consecutive years after such change or reformulation is made.

3.4.2 For purposes of determining whether a Covered Product qualifies as a Reformulated Covered Product, the arithmetic mean of the three (3) randomly selected samples of the Covered Products will be controlling.

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

1 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
2 independent third party laboratory certified by the California Environmental Laboratory
3 Accreditation Program or an independent third-party laboratory that is registered with the United
4 States Food & Drug Administration.

5 **3.4.5** Nothing in this Consent Judgment shall limit Designer Protein's ability to
6 conduct, or require that others conduct, additional testing of the Covered Products, including the
7 raw materials used in their manufacture.

8 **3.4.6** Designer Protein shall retain the laboratory reports of testing performed
9 under this Section 3.4 period of at least five years from the testing date. If there is an allegation
10 that a Covered Product is in violation of this Consent Judgment, ERC may make a written request
11 to Designer Protein delivered to the address set forth in Section 11 for copies of laboratory reports
12 with results of testing for that Covered Product performed under Section 3.4. In response, within
13 thirty (30) days of receipt of ERC's written request, Designer Protein shall provide such laboratory
14 reports to ERC.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
17 attorney's fees, and costs concerning the Notices and the Complaint, Designer Protein shall make
18 a total payment of \$170,000.00 ("Total Settlement Amount") to ERC in six monthly installments.
19 The first monthly installment of \$28,333.35 shall be due within 14 days of the Effective Date.
20 Each consecutive monthly payment of \$28,333.33 shall follow in increments of 30 days from the
21 first payment date ("Due Dates"). Designer Protein shall make these payments by wire transfer to
22 ERC's escrow account, for which ERC will give Designer Protein the necessary account
23 information. The Total Settlement Amount shall be apportioned as follows:

24 **4.2** \$53,882.55 shall be considered a civil penalty pursuant to California Health and
25 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$40,411.91) of the civil penalty to the Office
26 of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water
27 and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c).
28 ERC will retain the remaining 25% (\$13,470.64) of the civil penalty.

1 4.3 \$6,157.84 shall be distributed to ERC as reimbursement to ERC for reasonable
2 costs incurred in bringing this action.

3 4.4 \$27,335.00 shall be distributed to Michael Freund and \$1,457.50 shall be
4 distributed to Ryan Hoffman as reimbursement of ERC's attorney's fees, while \$40,755.27 shall
5 be distributed to ERC for its in-house legal fees.

6 4.5 \$40,411.84 shall be distributed to ERC as an Additional Settlement Payment
7 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
8 3204. ERC will utilize the ASP for activities that address Proposition 65 enforcement and monitoring
9 in other matters. These activities are detailed below and support ERC's overarching goal of reducing
10 and/or eliminating Proposition 65-listed chemicals in dietary supplement products in California.
11 ERC's activities have had, and will continue to have, a direct and primary effect within the State of
12 California because California consumers will be benefitted by the reduction and/or elimination of
13 exposure to lead and/or cadmium in dietary supplements and/or by providing clear and reasonable
14 warnings to California consumers prior to ingestion of the products.

15 Based on a review of past years' actual budgets, ERC is providing the following list of
16 activities ERC engages in to protect California consumers through Proposition 65 citizen
17 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those activities:
18 (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary supplement
19 products that may contain lead and/or cadmium and are sold to California consumers. This work
20 includes continued monitoring and enforcement of past consent judgments and settlements to ensure
21 companies are in compliance with their obligations thereunder, with a specific focus on those
22 judgments and settlements concerning lead and/or cadmium. This work also includes investigation of
23 new companies that ERC does not obtain any recovery through settlement or judgment; (2)
24 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary Compliance
25 Program by acquiring products from companies, developing and maintaining a case file, testing
26 products from these companies, providing the test results and supporting documentation to the
27 companies, and offering guidance in warning or implementing a self-testing program for lead and/or
28 cadmium in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining

1 ERC's "Got Lead?" Program which reduces the numbers of contaminated products that reach
2 California consumers by providing access to free testing for lead in dietary supplement products
3 (Products submitted to the program are screened for ingredients which are suspected to be
4 contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory for
5 testing, and the results shared with the consumer that submitted the product).

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

11 **4.6** In the event that Designer Protein fails to remit any of the payments owed under
12 Section 4 of this Consent Judgment on or before its respective Due Date, Designer Protein shall be
13 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide
14 written notice of the delinquency to Designer Protein via electronic mail. If Designer Protein fails to
15 deliver the delinquent payment within five (5) days from the written notice, the Total Settlement
16 Amount shall be immediately due and owing and shall accrue interest at the statutory judgment
17 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
18 Designer Protein agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect
19 the amount due under this Consent Judgment.

20 **4.7** Except as explicitly provided herein, each Party shall bear its own fees and costs.

21 **5. MODIFICATION OF CONSENT JUDGMENT**

22 **5.1** This Consent Judgment may be modified (as to its injunctive terms only) upon
23 written agreement of the Parties and upon entry of a modified Consent Judgment by the Court
24 thereon, or upon motion of either Party as provided under this Section 5 and upon entry of a
25 modified Consent Judgment.

26 **5.2** If there is a higher naturally occurring allowance than that specified in Table 3.3, or
27 if there is a less stringent lead or cadmium standard than that specified in Section 3.3, which is
28 adopted after the Execution Date by a final statutory or regulatory amendment to Proposition 65,

1 then Designer Protein or ERC, at either of their options, shall be entitled to seek modification of
2 the Consent Judgment by the Court to incorporate such other allowances or standard.

3 **5.3** If either party seeks to modify this Consent Judgment pursuant to Sections 5.1
4 and/or 5.2 ("noticing party"), then the noticing party must provide written notice to the other party
5 ("receiving party") of its intent ("Notice of Intent"). If the receiving party seeks to meet and
6 confer regarding the proposed modification in the Notice of Intent, then it must provide written
7 notice to the noticing party within thirty (30) days of receiving the Notice of Intent. If the
8 receiving party notifies the noticing party in a timely manner of its intent to meet and confer, then
9 the Parties shall meet and confer in good faith as required in this Section. If the receiving party
10 does not provide timely notice to noticing party of its intent to meet and confer under this Section
11 5.3, the noticing party shall be entitled to seek Court approval of the modification requested in its
12 Notice of Intent and the receiving Party shall not be entitled to object to the requested
13 modification. If the receiving party provides timely notice to the noticing party of its intent to
14 meet and confer under this Section 5.3, the Parties shall meet in person or via telephone within
15 thirty (30) days of the receiving party's notification of its intent to meet and confer. Within thirty
16 (30) days of such meeting, if the receiving party disputes the proposed modification, the receiving
17 party shall provide to the requesting party a written basis for its position. The Parties shall
18 continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining
19 disputes. Should it become necessary, the Parties may agree in writing to different deadlines for
20 the meet-and-confer period.

21 **5.4** In the event that Designer Protein initiates or otherwise requests a modification
22 pursuant to Sections 5.1 and/or 5.2, , and the meet-and -confer process leads to a joint motion or
23 application to modify the Consent Judgment, Designer Protein shall reimburse ERC its costs and
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and arguing
25 the motion or application.

26 **5.5** If the meet-and-confer process specified in Section 5.4 does not lead to a joint
27 motion or application in support of a modification of the Consent Judgment, or if the receiving
28 party does not agree to the noticing party's requested modification under Sections 5.1 and/or 5.2,

1 then either Party may seek judicial relief on its own. In that event, the Party seeking judicial relief
2 shall bear the burden of proving, by a preponderance of the evidence, that it meets the grounds for
3 the requested relief.

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

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
6 this Consent Judgment.

7 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated Covered
8 Product (for which ERC alleges that no Warning has been provided), then ERC shall inform
9 Designer Protein in a reasonably prompt manner of its test results, including information sufficient
10 to permit Designer Protein to identify the Covered Products at issue. Designer Protein shall,
11 within thirty days following such notice, provide ERC with testing information, from an
12 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
13 demonstrating Designer Protein's compliance with the Consent Judgment, if warranted. The
14 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

15 **7. APPLICATION OF CONSENT JUDGMENT**

16 This Consent Judgment shall be binding upon, and shall inure to the benefit of, the Parties and
17 their respective successors, and assigns.

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

19 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
20 behalf of itself and in the public interest, and Designer Protein and its officers, directors,
21 shareholders, owners, employees, agents, parent companies, subsidiaries, divisions (collectively
22 referred to as the "Designer Protein Releasees"), suppliers, franchisors, franchisees, licensors,
23 licensees, customers (not including private label customers of Designer Protein), distributors,
24 wholesalers, retailers (including but not limited to Rainbow Grocery Cooperative, Inc., Vitamin
25 Shoppe, Inc. and Vitamin Shoppe Industries, Inc.), and all other upstream and downstream entities
26 in the distribution chain of any Covered Product, and the predecessors, successors and assigns of
27 any of them (collectively, the "Covered Releasees"). ERC, on behalf of itself and its respective
28 owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents,

1 subsidiaries, servants, administrators, successors, assigns, and attorneys (collectively referred as
2 the "ERC Releasees"), and on behalf of the general public in the public interest, fully releases and
3 discharges the Released Parties from any and all claims, actions, causes of action, suits, demands,
4 liabilities, damages, penalties, fees (including but not limited to attorneys' fees, expert fees, and
5 investigator fees), costs and expenses (collectively referred to as the "Claims") for alleged
6 violations of Proposition 65 asserted in the Notices arising from the failure to provide warnings for
7 alleged exposures to lead and cadmium, or for causing alleged exposures to lead and cadmium, in
8 Covered Products manufactured before the Compliance Date. Compliance with the terms of this
9 Consent Judgment shall be deemed to constitute compliance with Proposition 65 by any Covered
10 Releasee regarding alleged exposures to lead and cadmium in the Covered Products manufactured
11 on and after the Compliance Date.

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

18 **8.3** ERC, on behalf of itself and the ERC Releasees, and Designer Protein, on behalf of
19 itself and the Designer Protein Releasees, hereby release and discharge each other from any and all
20 known and unknown Claims for alleged violations of Proposition 65 arising from or relating to
21 alleged exposures to lead and lead compounds and cadmium in the Covered Products manufactured
22 prior to the Compliance Date. It is possible that other Claims not known to the Parties arising out of
23 the facts alleged in the Notice of Violation or the Complaint and relating to the Covered Products
24 will develop or be discovered. ERC, on behalf of itself and the ERC Releasees and Designer
25 Protein on behalf of itself and the Designer Protein Releasees, acknowledge that this Consent
26 Judgment is expressly intended to cover and include all such Claims, including all rights of action
27 therefor up through and including the Compliance Date. ERC, the ERC Releasees, Designer
28 Protein, and the Designer Protein Releasees have full knowledge of the contents of California Civil

1 Code section 1542. ERC, on behalf of itself and the ERC Releasees, and Designer Protein on
2 behalf of itself and the Designer Protein Releasees, acknowledge that the Claims released in
3 Sections 8.1 and 8.2 may include unknown Claims, and nevertheless waive California Civil Code
4 section 1542 as to any such unknown Claims. California Civil Code section 1542 reads as follows:

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

8 ERC and Designer Protein acknowledge and understand the significance and consequences of this
9 specific waiver of California Civil Code section 1542.

10 **8.4** Nothing in the scope of the releases in this Section 8 shall affect or limit any
11 Party's right to seek to enforce the terms of this Consent Judgment. Nothing in this Consent
12 Judgment is intended to apply to any occupational or environmental exposures arising under
13 Proposition 65, nor shall it apply to any of Designer Protein's products other than the Covered
14 Products.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

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

26 Chris Heptinstall, Executive Director, Environmental Research Center
27 3111 Camino Del Rio North, Suite 400
28 San Diego, CA 92108
Tel: (619) 500-3090
Email: chris_erc501c3@yahoo.com

1 With a copy to:

2 Michael Freund
3 Ryan Hoffman
4 MICHAEL FREUND & ASSOCIATES
5 1919 Addison Street, Suite 105
6 Berkeley, California 94704
7 Telephone: (510) 540-1992
8 Facsimile: (510) 540-5543
9 Email: Freund1@aol.com

10 **FOR DESIGNER PROTEIN, LLC:**

11 Jan Hall, CEO
12 Designer Protein
13 2355 Camino Vida Roble
14 Carlsbad, CA 92011

15 With a copy to:

16 Daniel S. Silverman
17 VENABLE LLP
18 2049 Century Park East, Suite 2300
19 Los Angeles, CA 90067
20 Telephone: (310) 229-9900
21 Facsimile: (310) 229-9901
22 Email: dssilverman@venable.com

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
26 Consent Judgment.

27 **12.2** If this Stipulated Consent Judgment is not approved by the Court, it shall be void
28 and have no force or effect.

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

13. EXECUTION AND COUNTERPARTS

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

1 **14. DRAFTING**

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

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

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

15 **16. ENFORCEMENT**

16 ERC may, by motion or order to show cause before the Superior Court of Alameda County,
17 enforce the terms and conditions contained in this Consent Judgment. In any action brought by
18 ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies
19 as are provided by law for failure to comply with the Consent Judgment. To the extent the failure to
20 comply with the Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC
21 shall not be limited to enforcement of this Consent Judgment, but may seek in another action
22 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with
23 Proposition 65 or other laws.

24 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

1 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
2 or to bind any Party.

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

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

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

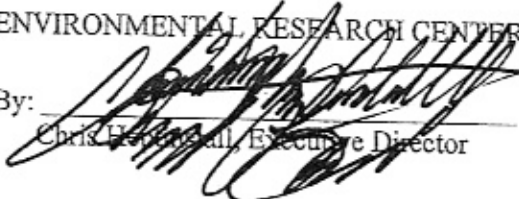
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been
12 diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

15 **IT IS SO STIPULATED:**

16 Dated: 6/12/17, 2017

ENVIRONMENTAL RESEARCH CENTER, INC.

17 By: 
18 Chris Hopwood, Executive Director

19 Dated: JUNE 12TH, 2017

DESIGNER PROTEIN, LLC

20 By: Jan Hall
21 Jan Hall, CEO
22
23
24
25
26
27
28

1 APPROVED AS TO FORM:

2 Dated: 6/12, 2017

MICHAEL FREUND & ASSOCIATES

3
4 By: 

5 Michael Freund
6 Ryan Hoffman
7 Attorneys for Plaintiff Environmental
8 Research Center, Inc.

8 Dated: June 12, 2017

VENABLE LLP

9
10 By: 

11 Daniel S. Silverman
12 Attorneys for Defendant Designer Protein, LLC

13 **ORDER AND JUDGMENT**

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17 Dated: 8/15, 2017

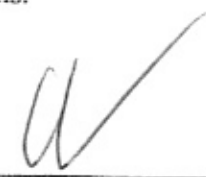
18 
19 _____
20 Judge of the Superior Court

EXHIBIT A
COVERED PRODUCTS

1. Designer Protein LLC Designer Whey With Acti-Blend Natural High-Protein Shake Chocolate Swirl - Lead
2. Designer Protein LLC Designer Whey Natural Premium 100% Whey Protein Unflavored - Lead
3. Designer Protein LLC Designer Whey 100 Calorie High-Protein Shake French Vanilla - Lead
4. Designer Protein LLC LITE Natural Protein Chocolate Cookies & Cream - Lead
5. Designer Protein LLC Organic Pro 30 Natural Chocolate – Lead, Cadmium
6. Designer Protein LLC Organic Pro 30 Natural Vanilla – Lead, Cadmium
7. Designer Protein LLC Essential 10 Meal Replacement Madagascar Vanilla – Lead, Cadmium
8. Designer Protein LLC Sunshine Protein California Clean Chocolate – Lead, Cadmium
9. Designer Protein LLC Sunshine Protein California Clean Meal Replacement Vanilla - Lead
10. Designer Protein LLC Sunshine Protein California Clean Meal Replacement Chocolate - Lead
11. Designer Protein LLC Sunshine Protein California Clean Vanilla - Lead
12. Designer Protein LLC Essential 10 Meal Replacement Belgian Chocolate - Lead
13. Designer Protein LLC Essential 10 Protein Choco Love - Lead
14. Designer Protein LLC Essential 10 Super Greens Superfood With Kale & Barley Grass - Lead
15. Designer Protein LLC Aria Women's Wellness Protein Chocolate - Lead
16. Designer Protein LLC Designer Whey Natural 100% Whey Protein Gourmet Chocolate - Lead
17. Designer Protein LLC Aria Women's Wellness Protein Vanilla - Lead

18. Designer Protein LLC Sunshine Protein Sunflower Protein & Superfoods Chocolate - Cadmium
19. Designer Protein LLC Sunshine Protein Sunflower Protein & Superfoods Vanilla - Cadmium
20. Designer Protein LLC Sunshine Protein Sunflower Protein & Superfoods Unflavored - Cadmium
21. Designer Protein LLC Sustained Energy Natural Endurance Protein Vanilla Bean -
Lead
22. Designer Protein LLC Designer Whey Sustained Energy Premium Protein Powder Endurance Blend Chocolate Velvet - Lead
23. Designer Protein LLC Lite Mini Meal Low Calorie Meal Replacement Milk Chocolate - Lead
24. Designer Protein LLC Designer Whey Native Whey Isolate Chocolate Milkshake - Lead
25. Designer Protein LLC Essential 10 Performance Chocolate - Lead, Cadmium
26. Designer Protein LLC Essential 10 Performance Vanilla - Lead, Cadmium
27. Designer Protein LLC Designer Whey Natural 100% Whey Protein Double Chocolate - Lead
28. Aria Chocolate - Lead
29. Designer Whey Protein Meal Milk Chocolate - Lead
30. Designer Whey Organic Meal Milk Chocolate - Lead
31. Designer Whey Advanced Grass Fed Chocolate Fudge - Lead
32. Essential 10 MRP Chocolate Mocha - Lead
33. Designer Whey Organic Meal Vanilla Bean - Lead

Michael Freund & Associates

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

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

July 29, 2016

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Designer Protein, LLC

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

- **Designer Protein LLC Designer Whey With Acti-Blend Natural High-Protein Shake Chocolate Swirl - Lead**
- **Designer Protein LLC Designer Whey Natural Premium 100% Whey Protein Unflavored - Lead**
- **Designer Protein LLC Designer Whey 100 Calorie High-Protein Shake French Vanilla - Lead**
- **Designer Protein LLC LITE Natural Protein Chocolate Cookies & Cream - Lead**

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

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

Exhibit B

July 29, 2016

Page 2


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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 29, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Designer Protein, LLC and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

July 29, 2016

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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Designer Protein, LLC

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 29, 2016



Michael Freund

July 29, 2016

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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 July 29, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Designer Protein, LLC
2355 Camino Vida Roble
Carlsbad, CA 92011

Corporation Service Company
(Designer Protein, LLC's Registered
Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Current President or CEO
Designer Protein, LLC
5050 Avenida Encinas, Suite 350
Carlsbad, CA 92008

Corporation Service Company which
will do business in California as CSC-Lawyers
Incorporating Service
(Designer Protein, LLC's Registered
Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833

Current President or CEO
Designer Protein, LLC
Post Office Box 2469
Carlsbad, CA 92018

On July 29, 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 July 29, 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 Violation of California Health & Safety Code §25249.5 *et seq.*

July 29, 2016

Page 5

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

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

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

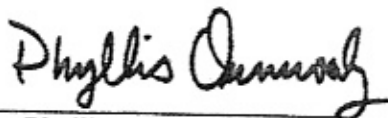
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 July 29, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on July 29, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	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, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	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, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	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, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Cir., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	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	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Shasta County 1355 West Street Redding, CA 96001	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	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, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	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, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	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, Inyo County 230 W. Line Street Bishop, CA 93514	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, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301			

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 OEHHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: July 29, 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: July 29, 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

Michael Freund & Associates

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

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

November 14, 2016

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Designer Protein, LLC

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. Designer Protein LLC Organic Pro 30 Natural Chocolate – Lead, Cadmium
2. Designer Protein LLC Organic Pro 30 Natural Vanilla – Lead, Cadmium
3. Designer Protein LLC Essential 10 Meal Replacement Madagascar Vanilla – Lead, Cadmium
4. Designer Protein LLC Sunshine Protein California Clean Chocolate – Lead, Cadmium
5. Designer Protein LLC Sunshine Protein California Clean Meal Replacement Vanilla - Lead
6. Designer Protein LLC Sunshine Protein California Clean Meal Replacement Chocolate - Lead
7. Designer Protein LLC Sunshine Protein California Clean Vanilla - Lead
8. Designer Protein LLC Essential 10 Meal Replacement Belgian Chocolate - Lead
9. Designer Protein LLC Essential 10 Protein Choco Love -Lead
10. Designer Protein LLC Essential 10 Super Greens Superfood With Kale & Barley Grass - Lead
11. Designer Protein LLC Aria Women's Wellness Protein Chocolate - Lead
12. Designer Protein LLC Designer Whey Natural 100% Whey Protein Gourmet Chocolate - Lead
13. Designer Protein LLC Aria Women's Wellness Protein Vanilla - Lead
14. Designer Protein LLC Sunshine Protein Sunflower Protein & Superfoods Chocolate - Cadmium

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15. Designer Protein LLC Sunshine Protein Sunflower Protein & Superfoods Vanilla - Cadmium
16. Designer Protein LLC Sunshine Protein Sunflower Protein & Superfoods Unflavored - Cadmium

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.

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 November 14, 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 Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to 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 Violator 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Designer Protein, LLC 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 Designer Protein, LLC

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are 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: November 14, 2016



Michael Freund

CERTIFICATE OF SERVICE

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

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

On November 14, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Designer Protein, LLC
2355 Camino Vida Roble
Carlsbad, CA 92011

Corporation Service Company
(Designer Protein, LLC's Registered
Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Current President or CEO
Designer Protein, LLC
5050 Avenida Encinas, Suite 350
Carlsbad, CA 92008

Corporation Service Company which
will do business in California as CSC-Lawyers
Incorporating Service
(Designer Protein, LLC's Registered
Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833

Current President or CEO
Designer Protein, LLC
Post Office Box 2469
Carlsbad, CA 92018

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

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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

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

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 November 14, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on November 14, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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

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

District Attorney, Amador County
708 Court Street, 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

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 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 OEIHA'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 OEIHA'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: November 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.**

Date: November 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

Michael Freund & Associates

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

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

June 9, 2017

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Designer Protein, LLC

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. Designer Protein LLC Sustained Energy Natural Endurance Protein Vanilla Bean - Lead
2. Designer Protein LLC Designer Whey Sustained Energy Premium Protein Powder Endurance Blend Chocolate Velvet - Lead
3. Designer Protein LLC Lite Mini Meal Low Calorie Meal Replacement Milk Chocolate - Lead
4. Designer Protein LLC Designer Whey Native Whey Isolate Chocolate Milkshake - Lead
5. Designer Protein LLC Essential 10 Performance Chocolate - Lead, Cadmium
6. Designer Protein LLC Essential 10 Performance Vanilla - Lead, Cadmium
7. Designer Protein LLC Designer Whey Natural 100% Whey Protein Double Chocolate - Lead
8. Aria Chocolate - Lead
9. Designer Whey Protein Meal Milk Chocolate - Lead
10. Designer Whey Organic Meal Milk Chocolate - Lead
11. Designer Whey Advanced Grass Fed Chocolate Fudge - Lead
12. Essential 10 MRP Chocolate Mocha - Lead
13. Designer Whey Organic Meal Vanilla Bean - 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.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 9, 2014, 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 Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to 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 Violator 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Designer Protein, LLC 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 Designer Protein, LLC

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are 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: June 9, 2017



Michael Freund

CERTIFICATE OF SERVICE

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

I am a citizen of the United States and over the age of 18 years of age. 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 June 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Designer Protein, LLC
2355 Camino Vida Roble
Carlsbad, CA 92011

Corporation Service Company
(Designer Protein, LLC's Registered
Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Current President or CEO
Designer Protein, LLC
5050 Avenida Encinas, Suite 350
Carlsbad, CA 92008

Corporation Service Company which
will do business in California as CSC-Lawyers
Incorporating Service
(Designer Protein, LLC's Registered
Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833

Current President or CEO
Designer Protein, LLC
Post Office Box 2469
Carlsbad, CA 92018

On June 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 June 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below:

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

June 9, 2017

Page 5

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

Allison Haley, 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

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

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

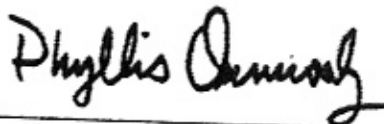
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 June 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on June 9, 2017, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

- District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612
- District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120
- District Attorney, Amador County
708 Court Street, 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
- 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
Hall of Justice
211 West Temple St., Ste 1200
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 92401
- District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101
- 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: June 9, 2017

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: June 9, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108
Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2014

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

² See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

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

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