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16 Attorney for Defendant
17 DIRECT DIGITAL, LLC, individually and doing
18 business as NUGENIX

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

DIRECT DIGITAL, LLC, individually and
doing business as NUGENIX, a Delaware
corporation,

Defendant.

CASE NO. RG 17859418

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 8, 2017

Trial Date: None set

1. INTRODUCTION

1.1 On May 8, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the

ENDORSED
FILED
ALAMEDA COUNTY

SEP 20 2017

CLERK OF THE SUPERIOR COURT
By DIANNE HYATT
Deputy

1 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),
2 against DIRECT DIGITAL, LLC, individually and doing business as NUGENIX ("DIRECT
3 DIGITAL"). In this action, ERC alleges that one of the products manufactured, distributed, or
4 sold by DIRECT DIGITAL contains lead, a chemical listed under Proposition 65, and which
5 product exposes consumers to this chemical at a level requiring a Proposition 65 warning. This
6 product (referred to hereinafter as the "Covered Product") is: Nugenix Ultimate Testosterone
7 Advanced Free Testosterone Complex.

8 **1.2** ERC and DIRECT DIGITAL are hereinafter referred to individually as a
9 "Party" or collectively as the "Parties."

10 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
11 causes, helping safeguard the public from health hazards by reducing the use and misuse of
12 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
13 and encouraging corporate responsibility.

14 **1.4** For purposes of this Consent Judgment, the Parties agree that DIRECT DIGITAL
15 is a business entity that has employed ten or more persons at all times relevant to this action, and
16 qualifies as a "person in the course of business" within the meaning of Proposition 65. DIRECT
17 DIGITAL manufactures, distributes, and/or sells the Covered Product.

18 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation
19 dated February 24, 2017 that was served on the California Attorney General, other public
20 enforcers, and DIRECT DIGITAL ("Notice"). A true and correct copy of the 60-Day Notice
21 dated February 24, 2017 is attached hereto as **Exhibit A** and is incorporated herein by
22 reference.

23 **1.6** ERC's Notice and Complaint allege that use of the Covered Product exposes
24 persons in California to lead without first providing clear and reasonable warnings in violation
25 of California Health and Safety Code section 25249.6. DIRECT DIGITAL denies all material
26 allegations contained in the Notice and Complaint, and maintains that it has complied with
27 Proposition 65 with respect to the Covered Product.
28

1 1.7 The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
4 be construed as an admission by any of the Parties or by any of their respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
6 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
7 violation of law.

8 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
10 current or future legal proceeding unrelated to these proceedings.

11 1.9 The Execution Date is the date on which this Consent Judgment is fully signed
12 by the Parties. The Effective Date is the date on which this Consent Judgment is entered by
13 this Court. The Compliance Date is one hundred twenty (120) days after the Effective Date.

14 2. **JURISDICTION AND VENUE**

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

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

23 3.1 Beginning on the Compliance Date, DIRECT DIGITAL shall be permanently
24 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
25 California", or directly selling in the State of California, any Covered Product which exposes a
26 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
27 meets the warning requirements under Section 3.2 or the reformulation requirements under
28

1 Section 3.3. This Section shall not apply to any Covered Product that was Distributed into the
2 State of California prior to the Compliance Date.

3 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
4 of California" shall mean to directly ship a Covered Product into California for sale in
5 California or to sell a Covered Product to a distributor that DIRECT DIGITAL knows or has
6 reason to know will sell the Covered Product in California.

7 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure
8 Level" shall be measured in micrograms, and shall be calculated using the following formula:
9 micrograms of lead per gram of product, multiplied by grams of product per serving of the
10 product (using the largest serving size appearing on the product label), multiplied by servings
11 of the product per day (using the largest number of servings in a recommended dosage
12 appearing on the product label), which equals micrograms of lead exposure per day.

13 3.2 Clear and Reasonable Warnings

14 If DIRECT DIGITAL is required to provide a warning pursuant to Section 3.1, one of the
15 following warnings must be utilized ("Warning"):

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

18 or

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

21 DIRECT DIGITAL shall use the phrase "cancer and" in the Warning only if the "Daily Lead
22 Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality
23 control methodology set forth in Section 3.4.

24 The Warning shall be securely affixed to or printed upon the container or label of each
25 Covered Product. In addition, for any Covered Product sold by DIRECT DIGITAL over the
26 internet, the Warning, or a hyperlink using the word "WARNING" that links to the warning,
27 shall appear in one of the following locations: (i) the checkout page when a California delivery
28 address is indicated for any purchase of any Covered Product, or (ii) the product display page.

1 An asterisk or other identifying method must be utilized to identify which products on the
2 checkout page are subject to the Warning.

3 The Warning shall be at least the same size as the largest of any other health or safety
4 warnings also appearing on its website or on the label or container of DIRECT DIGITAL's
5 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
6 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
7 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
8 statements may accompany the Warning that state or imply that the source of the listed chemical
9 has an impact on or results in a less harmful effect of the listed chemical.

10 DIRECT DIGITAL must display the above Warning with such conspicuousness, as
11 compared with other words, statements, design of the label, container, or on its website, as
12 applicable, to render the Warning likely to be read and understood by an ordinary individual under
13 customary conditions of purchase or use of the product.

14 3.3 Reformulated Covered Products

15 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
16 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
17 described in Section 3.4.

18 3.4 Testing and Quality Control Methodology

19 3.4.1 Prior to DIRECT DIGITAL's first distribution or sale of the Covered
20 Product manufactured after the Compliance Date, and at least once a year thereafter for three
21 (3) consecutive years, DIRECT DIGITAL shall arrange for lead testing of three (3) randomly
22 selected samples of the Covered Product, in the form intended for sale to the end-user, which
23 DIRECT DIGITAL intends to sell or is manufacturing for sale in California, directly selling to
24 a consumer in California or "Distributing into the State of California." The testing requirement
25 does not apply to Covered Products for which DIRECT DIGITAL has provided the Warning
26 specified in Section 3.2. If tests conducted pursuant to this Section demonstrate that no
27 Warning is required for a Covered Product during each of three (3) consecutive years, then the
28 testing requirements of this Section will no longer be required as to that Covered Product.

1 However, if during or after the three-year testing period, DIRECT DIGITAL changes
2 ingredient suppliers for the Covered Product and/or reformulates the Covered Product,
3 DIRECT DIGITAL shall test that Covered Product annually for at least two (2) consecutive
4 years after such change is made.

5 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest
6 lead detection result of the five (5) randomly selected samples of the Covered Product will be
7 controlling.

8 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
9 laboratory method that complies with the performance and quality control factors appropriate
10 for the method used, including limit of detection, qualification, accuracy, and precision that
11 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
12 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
13 method subsequently agreed to in writing by the Parties and approved by the Court through
14 entry of a modified consent judgment.

15 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
16 independent third party laboratory certified by the California Environmental Laboratory
17 Accreditation Program or an independent third-party laboratory that is registered with the
18 United States Food & Drug Administration.

19 3.4.5 Nothing in this Consent Judgment shall limit DIRECT DIGITAL's
20 ability to conduct, or require that others conduct, additional testing of the Covered Product,
21 including the raw materials used in their manufacture.

22 3.4.6 Within thirty (30) days of ERC's written request, DIRECT DIGITAL
23 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. DIRECT DIGITAL shall
24 retain all test results and documentation for a period of five years from the date of each test.

25 4. SETTLEMENT PAYMENT

26 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
27 attorney's fees, and costs, DIRECT DIGITAL shall make a total payment of \$100,000.00
28 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date").

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

4 4.2 \$48,086.54 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$36,064.90) of the civil penalty to
6 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code section 25249.12(c). ERC will retain the remaining 25% (\$12,021.64) of the civil
9 penalty.

10 4.3 \$1,582.85 shall be distributed to ERC as reimbursement to ERC for reasonable
11 costs incurred in bringing this action.

12 4.4 \$36,064.85 shall be distributed to ERC as an Additional Settlement Payment
13 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
14 3204. ERC will utilize the ASP for activities that address Proposition 65 enforcement and
15 monitoring in other matters. These activities are detailed below and support ERC's overarching
16 goal of reducing and/or eliminating Proposition 65-listed chemicals in dietary supplement
17 products in California. ERC's activities have had, and will continue to have, a direct and
18 primary effect within the State of California because California consumers will be benefitted by
19 the reduction and/or elimination of exposure to lead in dietary supplements and/or by providing
20 clear and reasonable warnings to California consumers prior to ingestion of the products.

21 Based on a review of past years' actual budgets, ERC is providing the following list of
22 activities ERC engages in to protect California consumers through Proposition 65 citizen
23 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
24 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
25 supplement products that may contain lead and are sold to California consumers. This work
26 includes continued monitoring and enforcement of past consent judgments and settlements to
27 ensure companies are in compliance with their obligations thereunder, with a specific focus on
28 those judgments and settlements concerning lead. This work also includes investigation of new

1 companies that ERC does not obtain any recovery through settlement or judgment; (2)
2 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
3 Compliance Program by acquiring products from companies, developing and maintaining a case
4 file, testing products from these companies, providing the test results and supporting
5 documentation to the companies, and offering guidance in warning or implementing a self-
6 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
7 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
8 products that reach California consumers by providing access to free testing for lead in dietary
9 supplement products (Products submitted to the program are screened for ingredients which are
10 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
11 qualified laboratory for testing, and the results shared with the consumer that submitted the
12 product).

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

18 4.5 \$6,210.00 shall be distributed to the Law Office of Richard M. Franco as
19 reimbursement of ERC's attorney's fees, while \$8,055.76 shall be distributed to ERC for its in-
20 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
21 costs.

22 4.6 In the event that DIRECT DIGITAL fails to remit the Total Settlement Amount
23 owed under Section 4 of this Consent Judgment on or before the Due Date, DIRECT DIGITAL
24 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
25 shall provide written notice of the delinquency to DIRECT DIGITAL via electronic mail. If
26 DIRECT DIGITAL fails to deliver the Total Settlement Amount within five (5) days from the
27 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
28 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,

1 DIRECT DIGITAL agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
2 collect the payment due under this Consent Judgment.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

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

7 **5.2** If either party seeks to modify this Consent Judgment under Section 5.1
8 ("Noticing Party"), then the Noticing Party must provide written notice to the other party
9 ("Receiving Party") of its intent ("Notice of Intent"). If the Receiving Party seeks to meet and
10 confer regarding the proposed modification in the Notice of Intent, then it must provide written
11 notice to the Noticing Party within thirty (30) days of receiving the Notice of Intent. If the
12 Receiving Party notifies the Noticing Party in a timely manner of its intent to meet and confer,
13 then the Parties shall meet and confer in good faith as required in this Section. The Parties
14 shall meet in person or via telephone within thirty (30) days of the Noticing Party's notification
15 of its intent to meet and confer. Within thirty (30) days of such meeting, if the Receiving Party
16 disputes the proposed modification, it shall provide to the Noticing Party a written basis for its
17 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an
18 effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in
19 writing to different deadlines for the meet-and-confer period.

20 **5.3** In the event that DIRECT DIGITAL initiates or otherwise requests a
21 modification under Section 5.1, and the meet and confer process leads to a joint motion or
22 application of the Consent Judgment, DIRECT DIGITAL shall reimburse ERC its costs and
23 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
24 arguing the motion or application.

25 **5.4** Where the meet-and-confer process does not lead to a joint motion or
26 application in support of a modification of the Consent Judgment, then either Party may seek
27 judicial relief on its own. In any such contested court proceeding, ERC may seek any
28 attorney's fees and costs incurred in opposing the motion that it may be legally entitled to.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
4 this Consent Judgment.

5 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform DIRECT DIGITAL in a reasonably prompt manner of its test results, including
8 information sufficient to permit DIRECT DIGITAL to identify the Covered Product at issue.
9 DIRECT DIGITAL shall, within thirty (30) days following such notice, provide ERC with
10 testing information, from an independent third-party laboratory meeting the requirements of
11 Sections 3.4.3 and 3.4.4, demonstrating DIRECT DIGITAL's compliance with the Consent
12 Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking
13 any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
17 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
18 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
19 application to any Covered Product which is distributed or sold exclusively outside the State of
20 California and which is not used by California consumers.

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

22 8.1 This Consent Judgment is a full, final, and binding resolution between ERC,
23 on behalf of itself and in the public interest, and DIRECT DIGITAL and its respective officers,
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
25 franchisees, licensees, customers (not including private label customers of DIRECT
26 DIGITAL), distributors, wholesalers, retailers, and all other upstream and downstream entities
27 in the distribution chain of any Covered Product, and the predecessors, successors, and assigns
28 of any of them (collectively, "Released Parties"). ERC, on behalf of itself and its respective

1 owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents,
2 subsidiaries, servants, administrators, successors, assigns, and attorneys (collectively referred
3 as the "ERC Releasees"), and on behalf of the general public in the public interest, hereby
4 waives all rights to institute or participate in (directly or indirectly) any form of legal action,
5 and fully releases and discharges the Released Parties from any and all claims, actions, causes
6 of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to
7 attorneys' fees, expert fees, and investigator fees), costs and expenses (collectively referred to
8 as the "Claims") for alleged violations of Proposition 65 asserted in the Notice arising from the
9 failure to provide warnings for alleged exposures to lead, or for causing alleged exposures to
10 lead, in Covered Product manufactured before the Compliance Date. Compliance with the
11 terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
12 by any Released Parties regarding alleged exposures to lead in the Covered Product
13 manufactured on and after the Compliance Date.

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

20 8.3 It is possible that other claims not known to the Parties, arising out of the facts
21 alleged in the Notice and Complaint, and relating to the Covered Product, will develop or be
22 discovered. ERC on behalf of itself only, and DIRECT DIGITAL on behalf of itself only,
23 acknowledge that this Consent Judgment is expressly intended to cover and include all such
24 claims up through and including the Effective Date, including all rights of action therefor. ERC
25 and DIRECT DIGITAL acknowledge that the claims released in Sections 8.1 and 8.2 above
26 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
27 any such unknown claims. California Civil Code section 1542 reads as follows:
28

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

6 ERC on behalf of itself only, and DIRECT DIGITAL on behalf of itself only, acknowledge and
7 understand the significance and consequences of this specific waiver of California Civil Code
8 section 1542.

9 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
10 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
11 in the Covered Product as set forth in the Notice and Complaint.

12 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
13 environmental exposures arising under Proposition 65, nor shall it apply to any of DIRECT
14 DIGITAL's products other than the Covered Product.

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
23 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
24 email 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

EXHIBIT A

LAW OFFICE OF RICHARD M. FRANCO

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510.684.1022
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VIA CERTIFIED MAIL

Current CEO or President
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913 West 2900 South, MS #730
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Current CEO or President
Direct Digital, LLC, individually and
doing business as Nugenix
508 West 5th Street, Suite 140
Charlotte, NC 28202

Current CEO or President
Direct Digital, LLC, individually and
doing business as Nugenix
364 Boylston Street, 3rd Floor
Boston, MA 02116

Corporation Service Company
(Direct Digital, LLC, individually and
doing business as Nugenix's Registered
Agent for Service of Process)
84 State Street
Boston, MA 02109

Corporation Service Company
(Direct Digital, LLC, individually and
doing business as Nugenix's Registered
Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

VIA CERTIFIED MAIL

Corporation Service Company
(Direct Digital, LLC, individually and
doing business as Nugenix's Registered
Agent for Service of Process)
327 Hillsborough Street
Raleigh, NC 27603

VIA ELECTRONIC MAIL

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daspecialops@ventura.org

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

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

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

Dear Addressees:

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

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

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

Direct Digital, LLC, individually and doing business as Nugenix

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

Nugenix Ultimate Testosterone Advanced Free Testosterone Complex - Lead

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

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

The Violator has manufactured, marketed, distributed, and/or sold the listed product, which has exposed and continues to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of this product by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling this product that they are being exposed

February 24, 2017

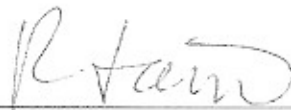
Page 4

to lead. Each of these ongoing violations has occurred on every day since February 24, 2014, as well as every day since the product was introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed product so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

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

Sincerely,



Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Direct Digital, LLC, individually and doing business as Nugenix, and its Registered Agents for Service of Process only)

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

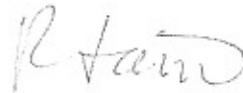
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Direct Digital, LLC, individually and doing business as Nugenix**

I, Rick Franco, declare:

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

Dated: February 24, 2017



Rick Franco

CERTIFICATE OF SERVICE

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

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

On February 24, 2017, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Direct Digital, LLC, individually and
doing business as Nugenix
550 South Caldwell Street, Suite 700
Charlotte, NC 28202

Corporation Service Company
(Direct Digital, LLC, individually and
doing business as Nugenix's Registered
Agent for Service of Process)
84 State Street
Boston, MA 02109

Current CEO or President
Direct Digital, LLC, individually and
doing business as Nugenix
913 West 2900 South, MS #730
South Salt Lake, UT 84119

Corporation Service Company
(Direct Digital, LLC, individually and
doing business as Nugenix's Registered
Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Current CEO or President
Direct Digital, LLC, individually and
doing business as Nugenix
508 West 5th Street, Suite 140
Charlotte, NC 28202

Corporation Service Company
(Direct Digital, LLC, individually and
doing business as Nugenix's Registered
Agent for Service of Process)
327 Hillsborough Street
Raleigh, NC 27603

Current CEO or President
Direct Digital, LLC, individually and
doing business as Nugenix
364 Boylston Street, 3rd Floor
Boston, MA 02116

On February 24, 2017, 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

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

February 24, 2017

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On February 24, 2017, 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:

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

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

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

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

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

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

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

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

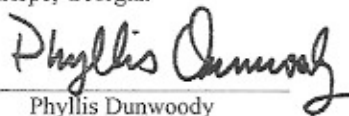
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 February 24, 2017, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on February 24, 2017, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	Hanford, CA 93230	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92401	Marysville, CA 95901
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 Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, 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 Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
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, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
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, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
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, Shasta County 1355 West Street Redding, CA 96001	
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, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
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, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
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, Tehama County Post Office Box 519 Red Bluff, CA 96080	
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, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonoma, CA 95370	
District Attorney, Kings County 1400 West Lacey Boulevard	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152	

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: February 24, 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: February 24, 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

27 CCR Appendix A, 27 CA ADC Appendix A