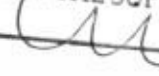


FILED  
ALAMEDA COUNTY

NOV 14 2017

CLERK OF THE SUPERIOR COURT

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16 Attorney for Defendant  
17 M.A.N. SPORTS LLC

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF ALAMEDA

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

23 Plaintiff,

24 vs.

25 M.A.N. SPORTS LLC and DOES 1-100

26 Defendants.

27 CASE NO. RG17867112

28 STIPULATED CONSENT  
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 5, 2017

Trial Date: None set

29 **1. INTRODUCTION**

30 **1.1** On July 5, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-  
31 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a  
32 Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant  
33 to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition

1 65”), against M.A.N. Sports LLC (“M.A.N. Sports”) and Does 1-100. In this action, ERC  
2 alleges that a number of products manufactured, distributed, or sold by M.A.N. Sports contain  
3 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
4 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
5 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
6 Products”) are: (1) MAN Metabolic Augmenting Nutrition PR-XT Advanced Testosterone  
7 Booster, (2) MAN Metabolic Augmenting Nutrition Body Octane Strawberry Mango, (3) MAN  
8 Man Sports Game Day SourBatch, (4) MAN Man Sports CLA Powder Blue Bomb-Sicle, (5)  
9 MAN Sports CLA Powder SourBatch, and (6) MAN Sports CLA Powder Dorks..

10 1.2 ERC and M.A.N. Sports are hereinafter referred to individually as a “Party” or  
11 collectively as the “Parties.”

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

16 1.4 For purposes of this Consent Judgment, the Parties agree that M.A.N. Sports is a  
17 business entity that has employed ten or more persons at all times relevant to this action, and  
18 qualifies as a “person in the course of business” within the meaning of Proposition 65. M.A.N.  
19 Sports manufactures, distributes, and/or sells the Covered Products.

20 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation  
21 dated March 24, 2017 that was served on the California Attorney General, other public  
22 enforcers, and M.A.N. Sports (“Notice”). A true and correct copy of the 60-Day Notice dated  
23 March 24, 2017 is attached hereto as **Exhibit A** and is incorporated herein by reference. More  
24 than 60 days have passed since the Notice was served on the Attorney General, public  
25 enforcers, and M.A.N. Sports and no designated governmental entity has filed a complaint  
26 against M.A.N. Sports with regard to the Covered Products or the alleged violations.

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

1 of California Health and Safety Code section 25249.6. M.A.N. Sports denies all material  
2 allegations contained in the Notice and Complaint.

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

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

13       **1.9** The Effective Date of this Consent Judgment is the date on which notice is given  
14 that it has been entered as a Judgment by this Court.

## 15       **2. JURISDICTION AND VENUE**

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

## 23       **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

24       **3.1** Beginning on the Effective Date, M.A.N. Sports shall be permanently enjoined  
25 from manufacturing for sale in the State of California, "Distributing into the State of  
26 California", or directly selling in the State of California, any Covered Products which expose a  
27 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it  
28 meets the warning requirements under Section 3.2.

1           3.1.1 As used in this Consent Judgment, the term "Distributing into the State  
2 of California" shall mean to directly ship a Covered Product into California for sale in  
3 California or to sell a Covered Product to a distributor that M.A.N. Sports knows or has reason  
4 to know will sell the Covered Product in California.

5           3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure  
6 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
7 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
8 product (using the largest serving size appearing on the product label), multiplied by servings  
9 of the product per day (using the largest number of servings in a recommended dosage  
10 appearing on the product label), which equals micrograms of lead exposure per day. If no  
11 recommended daily serving size is provided on the label, then the daily serving size shall equal  
12 one.

### 13           3.2 Clear and Reasonable Warnings

14           If M.A.N. Sports is required to provide a warning pursuant to Section 3.1, either of the  
15 following warnings must be utilized ("Warning"):

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

19 or a safe harbor warning that may be set forth in a successor to California Code of Regs., tit. 27,  
20 section 25607.2. M.A.N. Sports shall use the phrase "cancer and" in the Warning if M.A.N. Sports  
21 has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as  
22 determined pursuant to the quality control methodology set forth in Section 3.4 or if M.A.N. Sports  
23 has reason to believe that another Proposition 65 chemical is present at levels which may require a  
24 cancer warning.

25           The Warning shall be securely affixed to or printed upon the container or label of each  
26 Covered Product. In addition, for any Covered Product sold over the internet by M.A.N. Sports,  
27 the Warning shall appear on the checkout page, in a pop-up window, or on the product detail  
28 page when a California delivery address is indicated for any purchase of any Covered Product.  
An asterisk or other identifying method must be utilized to identify which products being

1 purchased are subject to the Warning.

2 The Warning shall be at least the same size as the largest of any other health or safety  
3 warnings also appearing on its website or on the label or container of M.A.N. Sports' product  
4 packaging and the word "WARNING" shall be in all capital letters and in bold print. The  
5 Warning will not contain statements indicating that the chemicals in the Covered Products are  
6 naturally occurring.

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

### 11 3.3 Reformulated Covered Products

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

### 15 3.4 Testing and Quality Control Methodology

16 3.4.1 Beginning within one year of the Effective Date, M.A.N. Sports shall  
17 arrange for lead testing of Covered Products at least once a year for a minimum of five  
18 consecutive years by arranging for testing of five randomly selected samples of each of the  
19 Covered Products, in the form intended for sale to the end-user, which M.A.N. Sports intends  
20 to sell or is manufacturing for sale in California, directly selling to a consumer in California or  
21 "Distributing into the State of California." If tests conducted pursuant to this Section  
22 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
23 years, then the testing requirements of this Section will no longer be required as to that Covered  
24 Product.

25 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the  
26 arithmetic mean lead detection result of the five (5) randomly selected samples of the Covered  
27 Products will be controlling.

28

1           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
2 laboratory method that complies with the performance and quality control factors appropriate  
3 for the method used, including limit of detection, qualification, accuracy, and precision that  
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
6 method subsequently agreed to in writing by the Parties and approved by the Court through  
7 entry of a modified consent judgment.

8           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
9 independent third party laboratory certified by the California Environmental Laboratory  
10 Accreditation Program or an independent third-party laboratory that is registered with the  
11 United States Food & Drug Administration.

12           **3.4.5** Nothing in this Consent Judgment shall limit M.A.N. Sports' ability to  
13 conduct, or require that others conduct, additional testing of the Covered Products, including  
14 the raw materials used in their manufacture.

15           **3.4.6** Within thirty (30) days of ERC's written request, which shall be made no  
16 more than once per year within the first five years after the Effective Date, M.A.N. Sports shall  
17 deliver lab reports obtained pursuant to Section 3.4 to ERC. M.A.N. Sports shall retain all test  
18 results and documentation for a period of five years from the Effective Date.

19       **4. SETTLEMENT PAYMENT**

20           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
21 attorney's fees, and costs, M.A.N. Sports shall make a total payment of \$65,000.00 ("Total  
22 Settlement Amount") in six equal monthly installment payments ("Due Dates"). The first  
23 monthly installment payment is due to ERC within 5 business days of the Effective Date. The  
24 five remaining installment payments are due at thirty day increments from the first payment.  
25 M.A.N. Sports shall make payments by wire transfer to ERC's escrow account, for which ERC  
26 will give M.A.N. Sports the necessary account information. The Total Settlement Amount  
27 shall be apportioned as follows:  
28



1           **4.2**   \$17,161.33 shall be considered a civil penalty pursuant to California Health and  
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$12,871.00) of the civil penalty to  
3 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$4,290.33) of the civil penalty.

6           **4.3**   \$4,536.05 shall be distributed to ERC as reimbursement to ERC for reasonable  
7 costs incurred in bringing this action.

8           **4.4**   \$12,870.97 shall be distributed to ERC as an Additional Settlement Payment  
9 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
10 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
11 caused by M.A.N. Sports in this matter. ERC represents that it will continue to engage in  
12 activities that support ERC's overarching goal of reducing and/or eliminating hazardous and  
13 toxic chemicals in dietary supplement products in California. ERC represents that its activities  
14 have had, and will continue to have, a direct and primary effect within the State of California  
15 because California consumers will be benefitted by the reduction and/or elimination of exposure  
16 to lead in dietary supplements and/or by providing clear and reasonable warnings to California  
17 consumers prior to ingestion of the products.

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

1 file, testing products from these companies, providing the test results and supporting  
2 documentation to the companies, and offering guidance in warning or implementing a self-  
3 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up  
4 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated  
5 products that reach California consumers by providing access to free testing for lead in dietary  
6 supplement products (Products submitted to the program are screened for ingredients which are  
7 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a  
8 qualified laboratory for testing, and the results shared with the consumer that submitted the  
9 product).

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

15 **4.5** \$13,795.00 shall be distributed to Michael Freund as reimbursement of ERC's  
16 attorney's fees. \$192.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
17 attorney's fees, while \$16,444.15 shall be distributed to ERC for its in-house legal fees. Except  
18 as explicitly provided herein, each Party shall bear its own fees and costs.

19 **4.6** In the event that M.A.N. Sports fails to remit any portion of the Total Settlement  
20 Amount owed under Section 4 of this Consent Judgment when due, M.A.N. Sports shall be  
21 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
22 provide written notice of the delinquency to M.A.N. Sports via electronic mail. If M.A.N.  
23 Sports fails to deliver the unpaid portion of the Total Settlement Amount within five (5) days  
24 from the written notice, the Total Settlement Amount shall become immediately due and owing  
25 and the unpaid portion of the Total Settlement Amount shall accrue interest at the statutory  
26 judgment interest rate provided in the California Code of Civil Procedure section 685.010.  
27 Additionally, M.A.N. Sports agrees to pay ERC's reasonable attorney's fees and costs for any  
28 efforts to collect the payment due under this Consent Judgment.



1     **5.   MODIFICATION OF CONSENT JUDGMENT**

2           **5.1**   This Consent Judgment may be modified only as to injunctive terms (i) by  
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
4 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
5 modified consent judgment.

6           **5.2**   If either party seeks to modify this Consent Judgment under Section 5.1, then  
7 that party must provide written notice to the other of its intent ("Notice of Intent") and seek to  
8 meet and confer regarding the proposed modification. The Parties shall meet in person or via  
9 telephone within thirty (30) days of the Notice of Intent. Should it become necessary, the  
10 Parties may agree in writing to different deadlines for the meet-and-confer period.

11           **5.3**   In the event that a party initiates or otherwise requests a modification under  
12 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
13 Consent Judgment, the party requesting the modification shall prepare, file and argue the  
14 motion or application.

15           **5.4**   Where the meet-and-confer process does not lead to a joint motion or  
16 application in support of a modification of the Consent Judgment, then either Party may seek  
17 judicial relief on its own.

18     **6.   RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
19     **JUDGMENT**

20           **6.1**   This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
21 this Consent Judgment.

22           **6.2**   If ERC alleges that any Covered Product fails to qualify as a Reformulated  
23 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
24 inform M.A.N. Sports in a reasonably prompt manner of its test results, including information  
25 sufficient to permit M.A.N. Sports to identify the Covered Products at issue. M.A.N. Sports  
26 shall, within thirty (30) days following such notice, provide ERC with testing information, from  
27 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
28 demonstrating M.A.N. Sports' compliance with the Consent Judgment, if warranted. The

1 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

2 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

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

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

14         ERC on behalf of itself only, and M.A.N. Sports on behalf of itself only, acknowledge and  
15 understand the significance and consequences of this specific waiver of California Civil Code  
16 section 1542.

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

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

## 23     **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

## 26     **10. GOVERNING LAW**

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

## 29     **11. PROVISION OF NOTICE**

30           All notices required to be given to either Party to this Consent Judgment by the other shall

1 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
2 email may also be sent.

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

4 Chris Heptinstall, Executive Director, Environmental Research Center  
5 3111 Camino Del Rio North, Suite 400  
6 San Diego, CA 92108  
7 Tel: (619) 500-3090  
8 Email: chris\_erc501c3@yahoo.com

9 With a copy to:  
10 Michael Freund  
11 Ryan Hoffman  
12 Michael Freund & Associates  
13 1919 Addison Street, Suite 105  
14 Berkeley, CA 94704  
15 Telephone: (510) 540-1992  
16 Facsimile: (510) 540-5543

17 **M.A.N. SPORTS LLC**

18 Steven Salmon, CEO  
19 P.O. Box 871202  
20 Mesquite, TX 75187  
21 214.952.6518  
22 Email: steven@mansports.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 the California Attorney General objects to any term in this Consent Judgment,  
28 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
prior to the hearing on the motion.

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

**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 to be as valid

1 as the original signature.

2 **14. DRAFTING**

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

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

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

16 **16. ENFORCEMENT**

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

25 **17. ENTIRE AGREEMENT, AUTHORIZATION**

26 **17.1** This Consent Judgment contains the sole and entire agreement and  
27 understanding of the Parties with respect to the entire subject matter herein, and any and all  
28 prior discussions, negotiations, commitments, and understandings related hereto. No

1 representations, oral or otherwise, express or implied, other than those contained herein have  
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
3 herein, shall be deemed to exist or to bind any Party.

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

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

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

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

14 (2) Make the findings pursuant to California Health and Safety Code section  
15 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

16 IT IS SO STIPULATED:

17 Dated: 7/28/, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

18  
19 By:   
20 Chris Thompson, Executive Director

21  
22 Dated: July, 28th,, 2017

M.A.N. SPORTS LLC

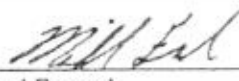
23 Steven Salmon  
24 Steven Salmon, CEO  
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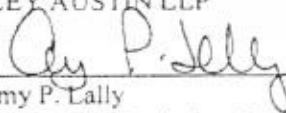
1 APPROVED AS TO FORM:

2 Dated: 7/28, 2017

MICHAEL FREUND & ASSOCIATES

3  
4 By:   
5 Michael Freund  
6 Ryan Hoffman  
7 Attorneys for Plaintiff Environmental  
8 Research Center, Inc.

8 Dated: 7-28, 2017

9  
10 SIDLEY AUSTIN LLP  
11 By:   
12 Amy P. Lally  
13 Attorney for Defendant M.A.N. Sports  
14 LLC

15 ORDER AND JUDGMENT

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

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19 Dated: 11/24, 2017


20   
21 Judge of the Superior Court

EXHIBIT 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.

March 24, 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:

**M.A.N. Sports 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:

- 1. MAN Metabolic Augmenting Nutrition PR-XT Advanced Testosterone Booster - Lead**
- 2. MAN Metabolic Augmenting Nutrition Body Octane Strawberry Mango - Lead**
- 3. MAN Man Sports Game Day SourBatch - Lead**
- 4. MAN Man Sports CLA Powder Blue Bomb-Sicle - Lead**
- 5. MAN Sports CLA Powder SourBatch - Lead**
- 6. MAN Sports CLA Powder Dorks - 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.

**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 this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 24, 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 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 M.A.N. Sports LLC and its Registered Agent 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 M.A.N. Sports 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: March 24, 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, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 24, 2017, 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 CEO or President  
M.A.N. Sports LLC  
Post Office Box 871202  
Mesquite, TX 75187

Current CEO or President  
M.A.N. Sports LLC  
9457 South University Boulevard, #110  
Highlands Ranch, CO 80126

Current CEO or President  
M.A.N. Sports LLC  
12561 Perimeter Road  
Dallas, TX 75228

Christiansen Bullock LLC  
(M.A.N. Sports LLC.'s Registered Agent for  
Service of Process)  
10300 North Central Expressway, Suite 281  
Dallas, TX 75231

On March 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

On March 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

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

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

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

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

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



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

March 24, 2017

Page 5

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

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

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

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

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

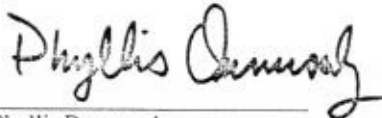
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On March 24, 2017, 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 March 24, 2017, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 24, 2017

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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 4<sup>th</sup> 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 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.<sup>1</sup> 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](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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501

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

#### **HOW IS PROPOSITION 65 ENFORCED?**

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

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

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

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



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

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

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

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

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

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

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

The notice is reproduced here:



Date: March 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: March 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).

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Signature of alleged violator or authorized representative Date

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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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> 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>.

<sup>2</sup> 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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