

HAYWARD HALL OF JUSTICE

Case # RG18-911053 Case Name Environmental Research V Five Percent

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013A (1), 2015.5)

My business address is 24405 Amador Street, Hayward, California 94544. I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, employed in the County where said mailing occurred, over the age of eighteen years and not a party to the above entitled cause.

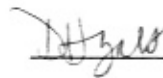
On December 6, 2018 I served the foregoing document by depositing a copy thereof, enclosed in a separate, sealed envelope, with the postage thereon fully prepaid, in the United States mail box at Hayward, County of Alameda, California, each of which envelopes was addressed respectively as follows:

Ryan Hoffman
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704

Anthony J. Cortez
Greenberg Traurig LLP
1201 K Street, # 1100
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2018, at Hayward, California.



(Signature of Declarant)

ENDORSED
FILED
ALAMEDA COUNTY
DEC - 6 2018
CLERK OF THE SUPERIOR COURT
By DIANNE HYATT Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

FIVE PERCENT NUTRITION, LLC,
individually and doing business as RICH
PIANA 5% NUTRITION and DOES 1-100,

Defendants.

Case No. RG18911053

~~PROPOSED~~ STATUTORY
FINDINGS AND ORDER
APPROVING PROPOSITION 65
SETTLEMENT

ASSIGNED FOR ALL PURPOSES
TO JUDGE DENNIS HAYASHI
DEPARTMENT 518

Hearing Date: 11/28/2018

Hearing Time: 2:30 p.m.

Reservation No.: R-1991731

This matter having come on calendar pursuant to a regularly noticed motion and the Court having reviewed all the evidence submitted in support of Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. ("ERC")'s motion to approve the settlement between ERC and Defendant FIVE PERCENT NUTRITION, LLC, individually and doing business as RICH PIANA 5% NUTRITION, the Court hereby makes the following findings pursuant to Health & Safety Code section 25249.7, subdivision (f)(4):

- 1) Any warnings that may be required by the Stipulated Consent Judgment fully comply with Proposition 65.
- 2) The attorneys' fees provision in the Stipulated Consent Judgment is reasonable

1 under California law; and

- 2 3) The civil penalty imposed by the Stipulated Consent Judgment is reasonable based
3 on the criteria set forth in Health & Safety Code section 25249.7, subdivision (b)(2)
4 and Cal. Code Regs., tit. 11, section 3203.

5 The Court further finds that allocation of the Additional Settlement Payment to ERC is
6 in the public interest as set forth in California Code of Regulations, title 11, section 3203
7 subsection (d).

8 **IT IS HEREBY ORDERED** that the Stipulated Consent Judgment submitted in this
9 matter is approved.

10
11
12 **DATED:** 12-6-18

DENNIS HAYASHI

HON. DENNIS HAYASHI

ENDORSED
FILED
ALAMEDA COUNTY

DEC - 6 2018

CLERK OF THE SUPERIOR COURT
By DIANNE HYATT Deputy

Ryan Hoffman SBN 283297
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

Attorneys for Plaintiff
Environmental Research Center, Inc.

Anthony J. Cortez (SBN 251743)
Willis Wagner (SBN 310900)
GREENBERG TRAURIG, LLP
1201 K St, Suite 1100
Sacramento, CA 95814-3938
Telephone: (916) 442-1111
Facsimile: (916) 448-1709

Attorneys for Defendant
FIVE PERCENT NUTRITION, LLC individually
and doing business as RICH PIANA 5% NUTRITION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

FIVE PERCENT NUTRITION, LLC,
individually and doing business as RICH
PIANA 5% NUTRITION and DOES 1-100

Defendants.

CASE NO. RG18911053

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 29, 2018
Trial Date: None set

I. INTRODUCTION

1.1 On June 29, 2018, 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 and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 ("Proposition 65"), against Five Percent Nutrition, LLC, individually and doing business as
3 Rich Piana 5% Nutrition ("5% Nutrition") and Does 1-100. In this action, ERC alleges that a
4 number of products manufactured, distributed, or sold by 5% Nutrition contain lead and/or
5 acrylamide, chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and
6 expose consumers to these chemicals at a level requiring a Proposition 65 warning. These
7 products (referred to hereinafter individually as a "Covered Product" or collectively as
8 "Covered Products") are: (1) Rich Piana 5% Nutrition Real Food Rice Cocoa Heaven (lead),
9 (2) Rich Piana 5% Nutrition Real Food Sweet Potato Pie (lead, acrylamide), (3) Rich Piana 5%
10 Nutrition RF Bar 100% Real Food Sweet Potato Pie (lead), (4) Rich Piana 5% Nutrition RF Bar
11 100% Real Food Blueberry Cobbler (lead), (5) Rich Piana 5% Nutrition Liver & Organ
12 Defender (lead), and (6) Rich Piana 5% Nutrition Joint Defender Maximum Joint Support
13 Strawberry Lemonade (lead).

14 1.2 ERC and 5% Nutrition are hereinafter referred to individually as a "Party" or
15 collectively as the "Parties."

16 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
17 causes, helping safeguard the public from health hazards by reducing the use and misuse of
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
19 and encouraging corporate responsibility.

20 1.4 For purposes of this Consent Judgment, the Parties agree that 5% Nutrition is a
21 business entity that has employed ten or more persons at all times relevant to this action, and
22 qualifies as a "person in the course of doing business" within the meaning of Proposition 65. 5%
23 Nutrition manufactures, distributes, and/or sells the Covered Products.

24 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation
25 dated March 15, 2018 and April 20, 2018 that were served on the California Attorney General,
26 other public enforcers, and 5% Nutrition ("Notices"). True and correct copies of the 60-Day
27 Notices dated March 15, 2018 and April 20, 2018 are attached hereto as Exhibits A and B and
28 each is incorporated herein by reference. More than 60 days have passed since the Notices

1 were served on the Attorney General, public enforcers, and 5% Nutrition and no designated
2 governmental entity has filed a complaint against 5% Nutrition with regard to the Covered
3 Products or the alleged violations.

4 1.6 ERC's Notices and Complaint allege that use of the Covered Products exposes
5 persons in California to lead and/or acrylamide without first providing clear and reasonable
6 warnings in violation of California Health and Safety Code section 25249.6. 5% Nutrition
7 denies all material allegations contained in the Notices and Complaint.

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

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

18 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
19 a Judgment by this Court.

20 2. JURISDICTION AND VENUE

21 For purposes of this Consent Judgment and any further court action that may become
22 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
23 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
24 over 5% Nutrition as to the acts alleged in the Complaint, that venue is proper in Alameda
25 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
26 resolution of all claims up through and including the Effective Date which were or could have
27 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

2 **3.1** Beginning on the Effective Date, 5% Nutrition shall be enjoined from
3 manufacturing for sale in the State of California, "Distributing into the State of California," or
4 directly selling in the State of California, any Covered Products which expose a person to a
5 "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or "Daily
6 Acrylamide Exposure Level" of more than 0.2 micrograms of acrylamide per day unless it
7 meets the warning requirements under Section 3.2. 5% Nutrition shall not be subject to further
8 liability for Covered Products sold to third parties without a warning prior to the Effective
9 Date.

10 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
11 of California" shall mean to directly ship a Covered Product into California for sale in
12 California or to sell a Covered Product to a distributor that 5% Nutrition knows or has reason to
13 know will sell the Covered Product in California.

14 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
15 Level" shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the recommended daily servings appearing on the label), which
19 equals micrograms of lead exposure per day, excluding, pursuant to Section 3.1.3, amounts of
20 allowances of lead in the ingredients listed in Table 1 below. If the label contains no
21 recommended daily servings, then the number of recommended daily servings shall be one.

22 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
23 5% Nutrition shall be allowed to deduct the amount of lead which is deemed "naturally
24 occurring" in any ingredient listed in Table 1 that is contained in that Covered Product under
25 the following conditions: For each year that 5% Nutrition claims entitlement to a "naturally
26 occurring" allowance, 5% Nutrition shall provide ERC with the following information: (a) 5%
27 Nutrition must produce to ERC a list of each ingredient in the Covered Product for which a
28 "naturally occurring" allowance is claimed; (b) 5% Nutrition must provide ERC with

documentation of laboratory testing that complies with Sections 3.4.4 and 3.4.5 and that shows the amount of lead, if any, contained in any ingredient listed in Table 1 that is contained in the Covered Product and for which 5% Nutrition intends to deduct "naturally occurring" lead; (c) If the laboratory testing reveals the presence of lead in any ingredient listed in Table 1 that is contained in the Covered Product, 5% Nutrition shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in Table 1, but not to exceed the total amount of lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in Table 1, 5% Nutrition shall not be entitled to a deduction for "naturally occurring" lead in the Covered Product for that ingredient. The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any year that 5% Nutrition shall claim entitlement to the "naturally occurring" allowance.

TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram

3.1.4 For purposes of this Consent Judgment, the "Daily Acrylamide Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of acrylamide per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by

1 servings of the product per day (using the recommended daily servings appearing on the label),
2 which equals micrograms of acrylamide exposure per day. If the label contains no
3 recommended daily servings, then the number of recommended daily servings shall be one.

4 3.2 Clear and Reasonable Warnings

5 If 5% Nutrition is required to provide a warning pursuant to Section 3.1, the following
6 warning must be utilized ("Warning"):

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

11 Substantially similar warning language shall be permitted for the six months following
12 the Effective Date. 5% Nutrition shall use the phrase "cancer and" in the Warning if 5% Nutrition
13 has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead,
14 if the "Daily Acrylamide Exposure Level" is greater than 0.2 micrograms per day, or if 5%
15 Nutrition has reason to believe that another Proposition 65 chemical is present which may require
16 a cancer warning, all as determined pursuant to the quality control methodology set forth in
17 Section 3.4. As identified in the brackets, the warning shall reflect at least one Proposition 65
18 substance (lead and/or acrylamide) for each end point (cancer or reproductive harm) that is present
19 in each of the Covered Products.

20 The Warning shall be provided to consumers prior to the purchase of each Covered
21 Product, whether it be online or on label. If the Warning is provided on the container or label, it
22 must be set off from other surrounding information and enclosed in a box and must be securely
23 affixed using adhesives or printed upon the container or label. For any Covered Product sold
24 over the internet to a California address, the Warning shall appear on the checkout page or
25 product page, and must be clearly linked to the Covered Product by use of an asterisk or other
26 identifying method, and must be provided prior to the consumer's purchase. Given 5%
27 Nutrition's lack of control over third-party websites, the online warning requirements expressed in
28 this Section apply only to Covered Products sold through 5% Nutrition's website.

Starting six months after the Effective Date, the Warning shall be at least the same size as

1 the largest of any other health or safety warnings also appearing on the 5% Nutrition website or on
2 the label or container of the Covered Product and the word "WARNING" shall be in all capital
3 letters and in bold print. No statements intended to or likely to have the effect of diminishing the
4 impact of the Warning on the average lay person shall accompany the Warning. Further no
5 statements may accompany the Warning that state or imply that the source of the listed chemical
6 has an impact on or results in a less harmful effect of the listed chemical.

7 5% Nutrition must display the above Warning with such conspicuousness, as compared
8 with other words, statements or designs on the label or container, or on its website, if 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 a Covered Product for which the "Daily Lead
13 Exposure Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Acrylamide
14 Exposure Level" is no more than 0.2 micrograms of acrylamide per day as determined by the
15 quality control methodology described in Section 3.4.

16 3.4 Testing and Quality Control Methodology

17 3.4.1 Beginning within one year of the Effective Date, 5% Nutrition shall
18 arrange for lead and acrylamide testing at least once a year for a minimum of three consecutive
19 years by arranging for testing of three randomly selected samples of each of the Covered
20 Products, in the form intended for sale to the end-user, which 5% Nutrition intends to sell or is
21 manufacturing for sale in California, directly selling to a consumer in California or
22 "Distributing into the State of California." If tests conducted pursuant to this Section
23 demonstrate that no Warning is required for a Covered Product during each of three
24 consecutive years, then the testing requirements of this Section will no longer be required as to
25 that Covered Product. However, if during or after the three-year testing period, 5% Nutrition
26 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
27 Covered Products, 5% Nutrition shall test that Covered Product annually for at least three (3)
28 consecutive years after such change is made. This Section 3.4.1 shall not apply to any Covered

1 Product for which 5% Nutrition continually maintains a Warning pursuant to Section 3.2.

2 3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and/or
3 "Daily Acrylamide Exposure Level," the highest lead and/or acrylamide detection result of the
4 three (3) randomly selected samples of the Covered Products will be controlling.

5 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
6 laboratory method that complies with the performance and quality control factors appropriate
7 for the method used, including limit of detection, qualification, accuracy, and precision that
8 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
9 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

14 3.4.5 Nothing in this Consent Judgment shall limit 5% Nutrition's ability to
15 conduct, or require that others conduct, additional testing of the Covered Products, including
16 the raw materials used in their manufacture.

17 3.4.6 Within thirty (30) days of receiving evidence of a further violation from
18 ERC, 5% Nutrition shall deliver lab reports obtained pursuant to Section 3.4 to ERC. 5%
19 Nutrition shall retain all test results and documentation for a period of five years from the date
20 of each test. ERC shall treat all documents provided by 5% Nutrition pursuant to this Section
21 as confidential.

22 4. SETTLEMENT PAYMENT

23 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney's fees, and costs, 5% Nutrition shall make a total payment of \$100,000.00 ("Total
25 Settlement Amount") to ERC within 10 business days from the Effective Date ("Due Date").
26 5% Nutrition shall make this payment by wire transfer to ERC's account, for which ERC will
27 give 5% Nutrition the necessary account information. The Total Settlement Amount shall be
28 apportioned as follows:

1 4.2 \$38,702.70 shall be considered a civil penalty pursuant to California Health and
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$29,027.02) 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% (\$9,675.68) of the civil penalty.

6 4.3 \$4,933.58 shall be distributed to ERC as reimbursement to ERC for reasonable
7 costs incurred in bringing this action.

8 4.4 \$29,026.99 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 Defendant in this matter. These activities are detailed below and support ERC's
12 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
13 supplement products in California. ERC's activities have had, and will continue to have, a direct
14 and primary effect within the State of California because California consumers will be benefitted
15 by the reduction and/or elimination of exposure to lead and/or acrylamide in dietary supplements
16 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
17 the products.

18 Based on a review of past years' actual budgets, ERC is providing the following list of
19 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/or acrylamide and are sold to California
23 consumers. This work includes continued monitoring and enforcement of past consent judgments
24 and settlements to ensure companies are in compliance with their obligations thereunder, with a
25 specific focus on those judgments and settlements concerning lead and/or acrylamide. This work
26 also includes investigation of new companies that ERC does not obtain any recovery through
27 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
28 ERC's Voluntary Compliance Program by acquiring products from companies, developing and

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

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

4.5 \$2,437.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's attorney's fees, while \$24,899.23 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

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

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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 5% Nutrition seeks to modify this Consent Judgment under Section 5.1, then
7 5% Nutrition must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
8 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
9 must provide written notice to 5% Nutrition within thirty (30) days of receiving the Notice of
10 Intent. If ERC notifies 5% Nutrition in a timely manner of ERC's intent to meet and confer,
11 then the Parties shall meet and confer in good faith as required in this Section. The Parties
12 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
13 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
14 modification, ERC shall provide to 5% Nutrition a written basis for its position. The Parties
15 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
16 remaining disputes. Should it become necessary, the Parties may agree in writing to different
17 deadlines for the meet-and-confer period.

18 **5.3** In the event that 5% Nutrition initiates or otherwise requests a modification
19 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
20 modification of the Consent Judgment, 5% Nutrition shall reimburse ERC its costs and
21 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
22 arguing the motion or application.

23 **5.4** Where the meet-and-confer process does not lead to a joint motion or
24 application in support of a modification of the Consent Judgment, then either Party may seek
25 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
26 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
27 section 1021.5.
28

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 5% Nutrition in a reasonably prompt manner of its test results, including information
8 sufficient to permit 5% Nutrition to identify the Covered Products at issue. 5% Nutrition shall,
9 within thirty (30) days following such notice, provide ERC with testing information, from an
10 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
11 demonstrating 5% Nutrition's compliance with the Consent Judgment, if warranted. The
12 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

21 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
22 on behalf of itself and in the public interest, and 5% Nutrition and its respective officers,
23 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
24 franchisees, licensees, customers (not including private label customers of 5% Nutrition),
25 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
26 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
27 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
28 hereby fully releases and discharges the Released Parties from any and all claims, actions,

1 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
2 asserted, or that could have been asserted from the handling, use, or consumption of the
3 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
4 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
5 lead and/or acrylamide up to and including the Effective Date.

6 **8.2** ERC on its own behalf only, and 5% Nutrition on its own behalf only,
7 further waive and release any and all claims they may have against each other for all actions or
8 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
9 65 in connection with the Notices and Complaint up through and including the Effective Date,
10 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
11 enforce the terms of this Consent Judgment.

12 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
13 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
14 discovered, including Covered Products that were sold to third party distributors and/or
15 retailers, without a warning, prior to the Effective Date. ERC on behalf of itself only, and 5%
16 Nutrition on behalf of itself only, acknowledge that this Consent Judgment is expressly
17 intended to cover and include all such claims up through and including the Effective Date,
18 including all rights of action therefore. ERC and 5% Nutrition acknowledge that the claims
19 released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive
20 California Civil Code section 1542 as to any such unknown claims. California Civil Code
21 section 1542 reads as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
24 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
25 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
26 OR HER SETTLEMENT WITH THE DEBTOR.

25 ERC on behalf of itself only, and 5% Nutrition on behalf of itself only, acknowledge and
26 understand the significance and consequences of this specific waiver of California Civil Code
27 section 1542.

1 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 and/or acrylamide in the Covered Products as set forth in the Notices and Complaint.

4 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of 5%
6 Nutrition's products other than the Covered Products.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

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

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

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Ph: (619) 500-3090
22 Email: chris_erc501c3@yahoo.com

23 With a copy to:

24 With a copy to:

25 Michael Freund

26 Ryan Hoffman

27 Michael Freund & Associates

28 1919 Addison Street, Suite 105

 Berkeley, CA 94704

 Telephone: (510) 540-1992

 Facsimile: (510) 540-5543

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1 FOR FIVE PERCENT NUTRITION, LLC, individually and doing business as
2 RICH PIANA 5% NUTRITION

3 Aimee Sierra and Peter Hye
4 8285 Bryan Dairy Road, Suite 190
5 Largo, FL 33777
6 Ph: (727) 202-9088 (Ext 14)

7 With a copy to:
8 Anthony J. Cortez
9 Willis Wagner
10 Greenberg Traurig, LLP
11 1201 K Street, Suite 1100
12 Sacramento, CA 95814-3938
13 Ph: (916) 442-1111
14 Fax: (916) 448-1709

11 12. COURT APPROVAL

12 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
14 Consent Judgment.

15 12.2 If the California Attorney General objects to any term in this Consent Judgment,
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
17 prior to the hearing on the motion.

18 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
19 void and have no force or effect.

20 13. EXECUTION AND COUNTERPARTS

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

24 14. DRAFTING

25 The terms of this Consent Judgment have been reviewed by the respective counsel for each
26 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
27 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
28 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn.

1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
4 equally in the preparation and drafting of this Consent Judgment.

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

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

10 **16. ENFORCEMENT**

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

19 **17. ENTIRE AGREEMENT, AUTHORIZATION**

20 **17.1** This Consent Judgment contains the sole and entire agreement and
21 understanding of the Parties with respect to the entire subject matter herein, and any and all
22 prior discussions, negotiations, commitments, and understandings related hereto. No
23 representations, oral or otherwise, express or implied, other than those contained herein have
24 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
25 herein, shall be deemed to exist or to bind any Party.

26 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the Party he or she represents to stipulate to this Consent Judgment.
28

1 18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
2 CONSENT JUDGMENT

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

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

9 (2) Make the findings pursuant to California Health and Safety Code section
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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1 IT IS SO STIPULATED;


2 Dated: 6/29/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hendricks, Executive Director

6
7 Dated: 6/29/, 2018

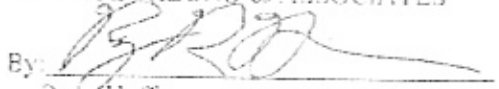
FIVE PERCENT NUTRITION, LLC,
individually and doing business as RICH
PIANA 5% NUTRITION

By: 
Its: Owner

13 APPROVED AS TO FORM:

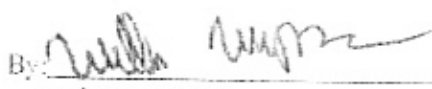
14 Dated: 7/2, 2018

MICHAEL FREUND & ASSOCIATES

By: 
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

19 Dated: June 29, 2018

GREENBERG TRAURIG, LLP

By: 
Anthony J. Cortez
Willis Wagner
Attorney for Defendant Five Percent
Nutrition, LLC, individually and doing
business as Rich Piana 5% Nutrition

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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.
IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: Dec. 6, 2018

D. M.
Judge of the Superior Court

EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

March 15, 2018

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). 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 Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of 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:

Five Percent Nutrition, LLC, individually and doing business as Rich Piana 5% Nutrition

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. Rich Piana 5% Nutrition Real Food Rice Cocoa Heaven - Lead
2. Rich Piana 5% Nutrition Real Food Sweet Potato Pie - Lead
3. Rich Piana 5% Nutrition RF Bar 100% Real Food Sweet Potato Pie - Lead
4. Rich Piana 5% Nutrition RF Bar 100% Real Food Blueberry Cobbler - Lead
5. Rich Piana 5% Nutrition Liver & Organ Defender - Lead

March 15, 2018

Page 2

6. Rich Piana 5% Nutrition Joint Defender Maximum Joint Support Strawberry Lemonade - 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 15, 2015, 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 ingesting 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.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Five Percent Nutrition, LLC, individually and doing business as Rich Piana 5% Nutrition, 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 Five Percent Nutrition, LLC, individually and doing business as Rich Piana 5% Nutrition

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-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 the Executive Director 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 15, 2018

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 15, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Five Percent Nutrition, LLC, individually
and doing business as Rich Piana 5% Nutrition
8285 Bryan Dairy Road, Suite 190
Largo, FL 33777

Peter Hye
(Registered Agent for Five Percent Nutrition, LLC,
individually and doing business as
Rich Piana 5% Nutrition)
8285 Bryan Dairy Road, Suite 190
Largo, FL 33777

Current President or CEO
Five Percent Nutrition, LLC, individually
and doing business as Rich Piana 5% Nutrition
527 D Street
Clearwater, FL 33756

Austin Gayne
(Registered Agent for Five Percent Nutrition, LLC,
individually and doing business as
Rich Piana 5% Nutrition)
259 Pompano Place
Norco, CA 92860

On March 15, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On March 15, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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@contracostaca.org

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq*
March 15, 2018
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Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
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

Jeffrey S. Roseil, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

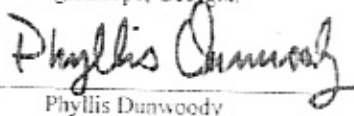
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 March 15, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 First Class Mail.

Executed on March 15, 2018, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive Ste 240 Roseville, CA 95678	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Del Norte County 450 H Street, Room 171 Crevice City, CA 95531	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Francisco City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett Pl. San Francisco, CA 94102
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Shasta County 1355 West Street Redding, CA 96001	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Sierra County 100 Courthouse Square, 2nd Floor Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Solano County 575 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sutter County 463 2nd Street Yuba City, CA 95991	

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. The reader is directed to the statute and OEHHA 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?

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>.

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 make known 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 Period. 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.cephha.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

² See Section 25501(a)(4).

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

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 P65PublicComments@oehha.ca.gov.

Revised: May 2017

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.

EXHIBIT B



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

April 20, 2018

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). 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 product 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 this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of 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:

Five Percent Nutrition, LLC, individually and doing business as Rich Piana 5% Nutrition

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in this product identified as exceeding allowable levels are:

1. Rich Piana 5% Nutrition Real Food Sweet Potato Pie - Acrylamide

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity.

April 20, 2018

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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 this product. 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 April 20, 2015, as well as every day since the product was 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 product. 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 ingesting this product 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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Five Percent Nutrition, LLC, individually and doing business as Rich Piana 5% Nutrition, 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 Five Percent Nutrition, LLC, individually and doing business as Rich Piana 5% Nutrition

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-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 the Executive Director 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: April 20, 2018



Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On April 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Five Percent Nutrition, LLC, individually
and doing business as Rich Piana 5% Nutrition
8285 Bryan Dairy Road, Suite 190
Largo, FL 33777

Peter Hye
(Registered Agent for Five Percent Nutrition, LLC,
individually and doing business as
Rich Piana 5% Nutrition)
8285 Bryan Dairy Road, Suite 190
Largo, FL 33777

Current President or CEO
Five Percent Nutrition, LLC, individually
and doing business as Rich Piana 5% Nutrition
527 D Street
Clearwater, FL 33756

Austin Gayne
(Registered Agent for Five Percent Nutrition, LLC,
individually and doing business as
Rich Piana 5% Nutrition)
259 Pompano Place
Norco, CA 92860

On April 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On April 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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

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

April 20, 2018

Page 5

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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
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

Kathryn L. Turner, Chief Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyCrimProp65@sandiego.gov

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

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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
clepd@yolocounty.org

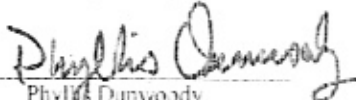
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

April 20, 2018

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On April 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 First Class Mail.

Executed on April 20, 2018, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

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

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

District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95642

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

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

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

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

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

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

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

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

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

District Attorney, Inyo County
P.O. Drawer D
Independence, CA 93526

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

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

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

District Attorney, Los Angeles County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San Bernardino County
303 West Third Street
San Bernardino, CA 92415

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, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
100 Courthouse Square, 2nd Floor
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
332 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
463 2nd 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 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,
10th 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. The reader is directed to the statute and OEHHA 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?

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>.

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 make known 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 Period. 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

² See Section 25501(a)(4).

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

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 P65PublicComments@oehha.ca.gov.

Revised: May 2017

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.