

FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**

14 **ENVIRONMENTAL RESEARCH**
15 **CENTER, INC., a California non-profit**
16 **corporation**

17 **Plaintiff,**

18 **vs.**

19 **RULE ONE PROTEINS, LLC; NUTRIVO,**
20 **LLC; and DOES 1-100**

21 **Defendants.**

CASE NO. RG19001614

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 7, 2019

Trial Date: None set

22
23 **1. INTRODUCTION**

24 **1.1** On January 7, 2019, Plaintiff Environmental Research Center, Inc. (“ERC”), a
25 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
26 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
27 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
28 (“Proposition 65”), against Rule One Proteins, LLC and Nutrivo, LLC (collectively “Rule

1 One”) and Does 1-100. In this action, ERC alleges that a number of products manufactured,
2 distributed, or sold by Rule One contain lead and/or cadmium, chemicals listed under
3 Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these
4 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
5 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Rule1 R1
6 LBS High Calorie Mass Gainer Chocolate Fudge (lead, cadmium), (2) Rule1 R1 LBS High
7 Calorie Mass Gainer Chocolate Peanut Butter (lead, cadmium), (3) Rule 1 R1 Plant Protein
8 Chocolate Fudge (lead), and (4) Rule 1 R1 Plant Protein Vanilla Crème (lead).

9 **1.2** ERC and Rule One are hereinafter referred to individually as a “Party” or
10 collectively as the “Parties.”

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

15 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
16 business entity each of which has employed ten or more persons at all times relevant to this
17 action, and qualifies as a “person in the course of doing business” within the meaning of
18 Proposition 65. Rule One manufactures, distributes, and/or sells the Covered Products.

19 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
20 dated October 19, 2018 that was served on the California Attorney General, other public
21 enforcers, and Rule One (“Notice”). A true and correct copy of the 60-Day Notice dated
22 October 19, 2018 is attached hereto as **Exhibit A** and incorporated herein by reference. More
23 than 60 days have passed since the Notice was served on the Attorney General, public
24 enforcers, and Rule One and no designated governmental entity has filed a Complaint against
25 Rule One with regard to the Covered Products or the alleged violations.

26 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
27 persons in California to lead and/or cadmium without first providing clear and reasonable
28 warnings in violation of California Health and Safety Code section 25249.6. Rule One denies

1 all material allegations contained in the Notice and Complaint.

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

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

12 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
13 a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

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

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

23 **3.1** Beginning on the Effective Date, Rule One shall be permanently enjoined from
24 manufacturing for sale in the State of California, "Distributing into the State of California," or
25 directly selling in the State of California, any Covered Products which expose a person to a
26 "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or "Daily
27 Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it meets
28 the warning requirements under Section 3.2.

1 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that Rule One knows or has reason to
4 know will sell the Covered Product in California.

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

12 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
13 Level” shall be measured in micrograms, and shall be calculated using the following formula:
14 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
15 product (using the largest serving size appearing on the product label), multiplied by servings
16 of the product per day (using the largest number of recommended daily servings appearing on
17 the label), which equals micrograms of cadmium exposure per day. If the label contains no
18 recommended daily servings, then the number of recommended daily servings shall be one.

19 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product, Rule
20 One shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in the
21 ingredients listed in **Table 1** that are contained in that Covered Product under the following
22 conditions: For each year that Rule One claims entitlement to a “naturally occurring” allowance,
23 Rule One shall provide ERC with the following information: (a) Rule One must produce to ERC
24 a written list of each ingredient in the Covered Product for which a “naturally occurring”
25 allowance is claimed; (b) Rule One must provide ERC with documentation of laboratory testing,
26 conducted during the year for which the “naturally occurring” allowance is claimed, that
27 complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in
28 each ingredient listed in **Table 1** that is contained in the Covered Product and for which Rule

One intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any of the ingredients listed in **Table 1** that are contained in the Covered Product, Rule One shall be entitled to deduct up to the full amount of the allowance for those ingredients, as listed in **Table 1**, but not to exceed the total amount of lead actually contained in those ingredients that are in the Covered Product; and (d) If the Covered Product does not contain any of the ingredients listed in **Table 1**, Rule One shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for those ingredients. 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 Rule One 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

3.2 Clear and Reasonable Warnings


If Rule One is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized (“Warning”):

OPTION 1

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

1 Rule One shall use the phrase “cancer and” in the Warning if Rule One has reason to
2 believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
3 determined pursuant to the quality control methodology set forth in Section 3.4 or if Rule One has
4 reason to believe that another Proposition 65 chemical is present which may require a cancer
5 warning. As identified in the brackets, the warning shall appropriately reflect whether there is
6 lead, cadmium, or both chemicals present in each of the Covered Products.

7 **OPTION 2**

8  **WARNING** : [Cancer and] Reproductive harm. www.P65Warnings.ca.gov/food.

9
10 For **Option 2**, a symbol consisting of a black exclamation point in a yellow equilateral
11 triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size
12 no smaller than the height of the word “**WARNING**.” Where the sign, label or shelf tag for the
13 product is not printed using the color yellow, the symbol may be printed in black and white.

14 Regardless of whether **Option 1** or **Option 2** is used, the Warning shall be securely
15 affixed to or printed upon the container or label of each Covered Product. If the Warning is
16 provided on the label, it must be set off from other surrounding information and enclosed in a
17 box. In addition, for any Covered Product sold over the internet, the Warning shall appear on the
18 checkout page when a California delivery address is indicated for any purchase of any Covered
19 Product. In no event shall any internet or website Warning be contained in or made through a
20 link.

21 The Warning shall be at least the same size as the largest of any other health or safety
22 warnings also appearing on its website or on the label or container of Rule One’s product
23 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
24 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
25 average lay person shall accompany the Warning. Further no statements may accompany the
26 Warning that state that the source of the listed chemical has an impact on or results in a less
27 harmful effect of the listed chemical.

28 Rule One must display the above Warning with such conspicuousness, as compared with

1 other words, statements or designs on the label or container, or on its website, if applicable, to
2 render the Warning likely to be read and understood by an ordinary individual under customary
3 conditions of purchase or use of the product.

4 **3.3 Conforming Covered Products**

5 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
6 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level”
7 is no more than 4.1 micrograms of cadmium per day as determined by the quality control
8 methodology described in Section 3.4.

9 **3.4 Testing and Quality Control Methodology**

10 **3.4.1** Beginning within one year of the Effective Date, Rule One shall arrange
11 for lead and cadmium testing of the Covered Products at least once a year for a minimum of
12 five consecutive years by arranging for testing of at least three randomly selected samples of
13 each of the Covered Products, in the form intended for sale to the end-user, which Rule One
14 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
15 California or “Distributing into the State of California.” If tests conducted pursuant to this
16 Section demonstrate that no Warning is required for a Covered Product during each of five
17 consecutive years, then the testing requirements of this Section will no longer be required as to
18 that Covered Product.

19 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
20 “Daily Cadmium Exposure Level,” the arithmetic mean of the lead and/or cadmium detection
21 result of the randomly selected samples of the Covered Products will be controlling.

22 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
23 laboratory method that complies with the performance and quality control factors appropriate
24 for the method used, including limit of detection, qualification, accuracy, and precision that
25 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
26 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

27 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
28 independent third party laboratory certified by the California Environmental Laboratory

1 Accreditation Program or an independent third-party laboratory that is registered with the
2 United States Food & Drug Administration.

3 **3.4.5** Nothing in this Consent Judgment shall limit Rule One's ability to
4 conduct, or require that others conduct, additional testing of the Covered Products, including
5 the raw materials used in their manufacture.

6 **3.4.6** Rule One shall retain all test results and documentation for a period of
7 five years from the date of each test.

8 **4. SETTLEMENT PAYMENT**

9 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
10 attorney's fees, and costs, Rule One shall make a total payment of \$80,000.00 ("Total
11 Settlement Amount") to ERC within 10 business days of the Effective Date ("Due Date").

12 Rule One shall make this payment by wire transfer to ERC's account, for which ERC will give
13 Rule One the necessary account information. The Total Settlement Amount shall be
14 apportioned as follows:

15 **4.2** \$13,162.14 shall be considered a civil penalty pursuant to California Health and
16 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$9,871.60) of the civil penalty to the
17 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
18 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
19 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,290.54) of the civil penalty.

20 **4.3** \$6,202.93 shall be distributed to ERC as reimbursement to ERC for reasonable
21 costs incurred in bringing this action.

22 **4.4** \$9,871.59 shall be distributed to ERC as an Additional Settlement Payment
23 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
24 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
25 caused by Defendant in this matter. These activities are detailed below and support ERC's
26 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
27 supplement products in California. ERC's activities have had, and will continue to have, a direct
28 and primary effect within the State of California because California consumers will be benefitted

1 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
2 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
3 the products.

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

24 ERC shall be fully accountable in that it will maintain adequate records to document and
25 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
26 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
27 shall provide the Attorney General, within thirty (30) days of any request, copies of
28 documentation demonstrating how such funds have been spent.

1 **4.5** \$15,795.00 shall be distributed to Michael Freund as reimbursement of ERC's
2 attorney's fees, \$1,625.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
3 attorney's fees, while \$33,343.34 shall be distributed to ERC for its in-house legal fees. Except
4 as explicitly provided herein, each Party shall bear its own fees and costs.

5 **4.6** In the event that Rule One fails to remit the Total Settlement Amount owed
6 under Section 4 of this Consent Judgment on or before the Due Date, Rule One shall be deemed
7 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
8 written notice of the delinquency to Rule One via electronic mail.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

10 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
11 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
12 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
13 modified consent judgment.

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

26 **5.3** In the event that Rule One initiates or otherwise requests a modification under
27 Section 5.1, and the meet and confer process leads to a joint motion or application for a
28 modification of the Consent Judgment, Rule One shall reimburse ERC its costs and reasonable

1 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the
2 motion or application.

3 **5.4** Where the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own.

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

8 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
9 this Consent Judgment.

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

18 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

26 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
27 on behalf of itself and in the public interest, and Rule One and its respective officers, directors,
28 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,

1 franchisees, licensees, customers (not including private label customers of Rule One),
2 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
3 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
4 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
5 hereby fully releases and discharges the Released Parties from any and all claims, actions,
6 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
7 asserted, or that could have been asserted from the handling, use, or consumption of the
8 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
9 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
10 lead and/or cadmium up to and including the Effective Date.

11 **8.2** ERC on its own behalf only, and Rule One on its own behalf only, further
12 waive and release any and all claims they may have against each other for all actions or
13 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
14 65 in connection with the Notice and Complaint up through and including the Effective Date,
15 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
16 enforce the terms of this Consent Judgment.

17 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
18 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
19 discovered. ERC on behalf of itself only, and Rule One on behalf of itself only, acknowledge
20 that this Consent Judgment is expressly intended to cover and include all such claims up
21 through and including the Effective Date, including all rights of action therefore. ERC and Rule
22 One acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown
23 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
24 claims. California Civil Code section 1542 reads as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
28 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

1 ERC on behalf of itself only, and Rule One on behalf of itself only, acknowledge and
2 understand the significance and consequences of this specific waiver of California Civil Code
3 section 1542.

4 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
6 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

7 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any of Rule One's
9 products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

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

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

26 With a copy to:
27 Michael Freund
28 Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Ph: (510) 540-1992
Fax: (510) 371-0885

1 **RULE ONE PROTEINS, LLC; NUTRIVO, LLC**

2 Jeff Gruskovak, Rule One Proteins
3 1785 N. Edgelawn Dr.
4 Aurora, IL 60506

5 With a copy to:

6 Melissa Jones
7 Stoel Rives LLP
8 500 Capitol Mall, Suite 1600
9 Sacramento, CA 95814
10 Ph: (916) 319-4649
11 Fax: (916) 447-4781
12 Email: melissa.jones@stoel.com

13 **12. COURT APPROVAL**

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

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

20 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
21 void and have no force or effect.

22 **13. EXECUTION AND COUNTERPARTS**

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

26 **14. DRAFTING**

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

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
3 equally in the preparation and drafting of this Consent Judgment.

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

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

9 **16. ENFORCEMENT**

10 ERC may, by motion or order to show cause before the Superior Court of Alameda
11 County, enforce the terms and conditions contained in this Consent Judgment. In any action
12 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
13 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
14 The prevailing party in any such action may seek to recover attorneys' fees and costs.

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

16 **17.1** This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter herein, and any and all
18 prior discussions, negotiations, commitments, and understandings related hereto. No
19 representations, oral or otherwise, express or implied, other than those contained herein have
20 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
21 herein, shall be deemed to exist or to bind any Party.

22 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the Party he or she represents to stipulate to this Consent Judgment.

24 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
25 **CONSENT JUDGMENT**

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

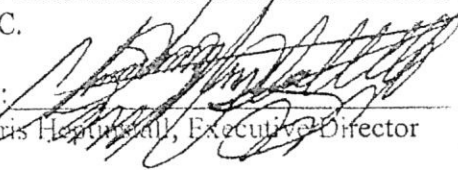
1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
2 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
3 been diligently prosecuted, and that the public interest is served by such settlement; and

4 (2) Make the findings pursuant to California Health and Safety Code section
5 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.
6

7 **IT IS SO STIPULATED:**

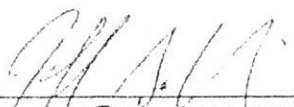
8
9 Dated: 5/20/, 2019

ENVIRONMENTAL RESEARCH CENTER,
INC.

10
11 By: 
Chris Heptinstall, Executive Director


12
13 Dated: 5/20, 2019

RULE ONE PROTEINS, LLC

14
15 By: 
Its: MANAGER

16
17
18 Dated: 5/20, 2019

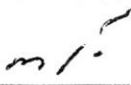
NUTRIVO, LLC

19
20 By: 
Its: MANAGER

21 **APPROVED AS TO FORM:**

22
23 Dated: 5/27/, 2019

MICHAEL FREUND & ASSOCIATES

24
25 By: 
26 Michael Freund
27 Attorney for Plaintiff Environmental
28 Research Center, Inc.

1 Dated: 5/24/, 2019

STOEL RIVES LLP

2
3 By: _____

Melissa Jones
Melissa Jones
Attorney for Defendants Rule One
Proteins, LLC and Nutrivo, LLC

4
5
6 **ORDER AND JUDGMENT**

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

9 IT IS SO ORDERED, ADJUDGED AND DECREED.

10
11 Dated: August 16 2019

Walter J. Orick
Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

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

Michael Freund, Esq.

Ryan Hoffman, Esq.

October 19, 2018

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Rule One Proteins, LLC
Nutrivo, LLC**

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

- 1. Rule1 R1 LBS High Calorie Mass Gainer Chocolate Fudge – Lead, Cadmium**
- 2. Rule1 R1 LBS High Calorie Mass Gainer Chocolate Peanut Butter – Lead, Cadmium**
- 3. Rule 1 R1 Plant Protein Chocolate Fudge - Lead**
- 4. Rule 1 R1 Plant Protein Vanilla Crème - Lead**

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

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

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

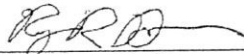
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 19, 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 these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

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

Sincerely,



Ryan Hoffman

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Rule One Proteins, LLC, Nutrivo, LLC and their 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 Rule One Proteins, LLC and Nutrivo, LLC

I, Ryan Hoffman, declare:

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


2. I am an attorney for the noticing party.

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators 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: October 19, 2018



Ryan Hoffman

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 October 19, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Rule One Proteins, LLC
1785 N. Edgelawn Dr.
Aurora, IL 60506

The Corporation Trust Company
(Registered Agent for Rule One Proteins, LLC)
Corporation Trust Center
1209 N. Orange St.
Wilmington, DE 19801

Current CEO or President
Nutrivo, LLC
1785 N. Edgelawn Dr.
Aurora, IL 60506

Kenneth W. Clingen
(Registered Agent for Nutrivo, LLC)
2300 Cabot Dr., Ste 500
Lisle, IL 60532

Kenneth W. Clingen
(Registered Agent for Rule One Proteins, LLC)
2300 Cabot Dr., Ste 500
Lisle, IL 60532

The Corporation Trust Company
(Registered Agent for Nutrivo, LLC)
Corporation Trust Center
1209 N. Orange St.
Wilmington, DE 19801

On October 19, 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
Oakland, CA 94612-0550

On October 19, 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** 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:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Rd.
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

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

October 19, 2018

Page 5

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

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

Allison Haley, District Attorney
Napa County
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

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@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

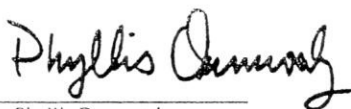
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
October 19, 2018
Page 6

On October 19, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 19, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

October 19, 2018

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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County County Post Office Box 730 Mariposa, CA 95338	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101		

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?

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

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>.

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 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.

² See Section 25501(a)(4).

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 P65Public.Comments@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.