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**FILED**  
**ALAMEDA COUNTY**

**DEC 17 2019**

CLERK OF THE SUPERIOR COURT

By *Nadia Quintana*

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

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

**Plaintiff,**

vs.

**USN NORTH AMERICA, INC.;**  
**ULTIMATE SPORTS NUTRITION (PTY) LTD; and and DOES 1-100**

**Defendants.**

CASE NO. RG19037446

**STIPULATED CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 1, 2019

Trial Date: None set

**1. INTRODUCTION**

1.1 On October 1, 2019, 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") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against USN North America, Inc. ("USN NA"), Ultimate Sports Nutrition (Pty) Ltd and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by USN NA contains lead, a chemical listed under Proposition 65 as a

1 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring  
2 a Proposition 65 warning. These products (referred to hereinafter individually as a "Covered  
3 Product" or collectively as "Covered Products") are: (1) USN Cutting Edge Series Low Carb  
4 Diet Whey Isolate Vanilla, (2) USN Cutting Edge Series Low Carb Diet Whey Isolate  
5 Chocolate, (3) USN BlueLab 100% Whey Ultra-Premium Whey Protein Powder Wheytella  
6 Chocolate & Hazelnut Flavor, (4) USN Cutting Edge Series Low Carb Diet Whey Isolate  
7 Cinnamon Bun, (5) USN Anabolic Grow Vanilla Ice Cream, (6) USN Energizing Amino Stim  
8 Blue Raspberry, (7) USN Energizing Amino Stim Pink Lemonade, (8) USN Energizing  
9 Amino Stim Fruit Punch, (9) USN Trust Protein Bar Peanut Butter, (10) USN Trust Protein  
10 Bar Chocolate Coconut, (11) USN Hardcore Anabolic All-In-One Mass The Ultimate High-  
11 Impact Mass Gainer Cookies & Cream, (12) USN Hardcore Anabolic All-In-One Mass The  
12 Ultimate High-Impact Mass Gainer Chocolate, (13) USN Hardcore Anabolic All-In-One Mass  
13 The Ultimate High-Impact Mass Gainer Vanilla Ice Cream, (14) USN Hardcore Anabolic All-  
14 In-One Mass The Ultimate High-Impact Mass Gainer Chocolate Peanut Butter, (15) USN  
15 Energizing Amino Stim Acai Berry, (16) USN Energizing Amino Stim Mango Pineapple, (17)  
16 USN Ultrabolic Mass All-In-One Gainer Chocolate, (18) USN Premium 100% Whey Protein  
17 Chocolate Rich Molten Flavor, (19) USN Anabolic Grow All-In-One Lean Gainer Chocolate  
18 Peanut Butter, (20) USN Anabolic Grow All-In-One Lean Gainer Cookies & Cream, (21) USN  
19 BlueLab 100% Whey Ultra-Premium Whey Protein Powder Vanilla Ice Cream, and (22) USN  
20 BlueLab 100% Whey Ultra-Premium Whey Protein Powder PB&J Peanut Butter & Jelly.

21 1.2 ERC and USN NA are hereinafter referred to individually as a "Party" or  
22 collectively as the "Parties."

23 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
24 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
25 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
26 and encouraging corporate responsibility.

27 1.4 For purposes of this Consent Judgment, the Parties agree that USN NA is a  
28 business entity which under the laws of California has employed ten or more persons during the

1 months of September, October, and November 2018 and qualifies as a "person in the course of  
2 doing business" within the meaning of Proposition 65. USN NA manufactures, distributes, and/or  
3 sells the Covered Products.

4 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation  
5 dated April 30, 2019 and May 13, 2019 that were served on the California Attorney General,  
6 other public enforcers, and USN NA ("Notices"). True and correct copies of the 60-Day  
7 Notices dated April 30, 2019 and May 13, 2019 are attached hereto as Exhibits A and B and  
8 are incorporated herein by reference. More than 60 days have passed since the Notices were  
9 served on the Attorney General, public enforcers, and USN NA and no designated  
10 governmental entity has filed a Complaint against USN NA with regard to the Covered  
11 Products or the alleged violations.

12 1.6 ERC's Notices and Complaint allege that use of the Covered Products exposes  
13 persons in California to lead without first providing clear and reasonable warnings in violation  
14 of California Health and Safety Code section 25249.6. USN NA denies all material allegations  
15 contained in the Notice and Complaint.

16 1.7 The Parties have entered into this Consent Judgment in order to settle,  
17 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
18 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
19 or be construed as an admission by any of the Parties or by any of their respective officers,  
20 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
21 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
22 issue of law, or violation of law.

23 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall  
24 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
25 any current or future legal proceeding unrelated to these proceedings.

26 1.9 The Effective Date of this Consent Judgment is the date on which it is entered  
27 as a Judgment by this Court.

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1     **2.    JURISDICTION AND VENUE**

2           For purposes of this Consent Judgment and any further court action that may become  
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
4 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
5 over USN NA as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
6 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
7 all claims up through and including the Effective Date which were or could have been asserted in  
8 this action based on the facts alleged in the Notices and Complaint.

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

10          **3.1**    Beginning on the Effective Date, USN NA shall be permanently enjoined from  
11 manufacturing for direct sale in the State of California, "Distributing into the State of  
12 California," or directly selling in the State of California, any Covered Products which expose a  
13 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it  
14 meets the warning requirements under Section 3.2.

15               **3.1.1**   As used in this Consent Judgment, the term "Distributing into the State  
16 of California" shall mean to directly ship a Covered Product into California for sale in  
17 California or to sell a Covered Product to a distributor that USN NA knows or has reason to  
18 know will sell the Covered Product in California. The Parties acknowledge that, after the  
19 Effective Date, USN NA's retailers may possess inventory of the Covered Products that was  
20 delivered to such retailers prior to the Effective Date and that may not bear the Warning (such  
21 inventory being referred to as "Exempt Inventory"). ERC agrees that this Consent Judgment  
22 does not cover any sales by USN NA's retailers of such Exempt Inventory, and USN NA's  
23 retailers may sell the Exempt Inventory without the requirement of a Warning.

24               **3.1.2**   For purposes of this Consent Judgment, the "Daily Lead Exposure  
25 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
26 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
27 product (using the largest serving size appearing on the product label), multiplied by servings  
28 of the product per day (using the largest number of recommended daily servings appearing on

1 the label), which equals micrograms of lead exposure per day. If the label contains no  
2 recommended daily servings, then the number of recommended daily servings shall be one.

### 3 3.2 Clear and Reasonable Warning

4 If USN NA is required to provide a warning pursuant to Section 3.1, the following  
5 warning must be utilized ("Warning"):

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

9 USN NA shall use the phrase "cancer and" in the Warning if USN NA has reason to  
10 believe that the the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as  
11 determined pursuant to the quality control methodology set forth in Section 3.4 or if USN NA has  
12 reason to believe that another Proposition 65 chemical is present which may require a cancer  
13 warning

14 The Warning shall be securely affixed to or printed upon the container or label of each  
15 Covered Product. If the Warning is provided on the label, it must be set off from other  
16 surrounding information and enclosed in a box. In addition, for any Covered Product sold over  
17 the internet by USN NA, the Warning shall appear on the checkout page when a California  
18 delivery address is indicated for any purchase of any Covered Product. An asterisk or other  
19 identifying method must be utilized to identify which products on the checkout page are  
20 subject to the Warning. In no event shall any internet or website Warning be contained in or  
21 made through a link.

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

USN NA 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 as determined by the quality control  
7 methodology described in Section 3.4.

### 8 3.4 Testing and Quality Control Methodology

9 3.4.1 Beginning within one year of the Effective Date, USN NA shall arrange  
10 for lead testing of the Covered Products at least once a year for a minimum of five consecutive  
11 years by arranging for testing of five randomly selected samples of each of the Covered  
12 Products, in the form intended for sale to the end-user, which USN NA intends to sell or is  
13 manufacturing for sale in California, directly selling to a consumer in California or  
14 "Distributing into the State of California." If tests conducted pursuant to this Section  
15 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
16 years, then the testing requirements of this Section will no longer be required as to that  
17 Covered Product.

18 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the  
19 average lead detection result of the five (5) randomly selected samples of the Covered Products  
20 will be controlling.

21 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a  
22 laboratory method that complies with the performance and quality control factors appropriate  
23 for the method used, including limit of detection, qualification, accuracy, and precision that  
24 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
25 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

26 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an  
27 independent third party laboratory certified by the California Environmental Laboratory  
28 Accreditation Program or an independent third party laboratory that is registered with the

1 United States Food & Drug Administration..

2 3.4.5 Nothing in this Consent Judgment shall limit USN NA's ability to  
3 conduct, or require that others conduct, additional testing of the Covered Products, including  
4 the raw materials used in their manufacture.

5 3.4.6 Within thirty (30) days of ERC's written request, USN NA shall deliver  
6 lab reports obtained pursuant to Section 3.4 to ERC. USN NA shall retain all test results and  
7 documentation for a period of five years from the date of each test.

8 3.4.7 The testing and reporting requirements of Sections 3.4.1 and 3.4.6 do  
9 not apply to any Covered Product for which USN NA has provided the Warning specified in  
10 Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event  
11 USN NA ceases to provide the Warning specified in Section 3.2, USN NA shall be required to  
12 comply with the testing and reporting requirements of Sections 3.4.1 and 3.4.6 beginning  
13 immediately after the date the Warning ceases to be provided or one year after the Effective  
14 Date, whichever date is later.

#### 15 4. SETTLEMENT PAYMENT

16 4.1 In full satisfaction of all potential civil penalties, additional settlement  
17 payments, attorney's fees, and costs, USN NA shall make a total payment of \$35,000.00  
18 ("Total Settlement Amount") to ERC within 14 days of the Effective Date ("Due Date"). USN  
19 NA shall make this payment by wire transfer to ERC's account, for which ERC will give USN  
20 NA the necessary account information. The Total Settlement Amount shall be apportioned as  
21 follows:

22 4.2 \$13,000.00 shall be considered a civil penalty pursuant to California Health and  
23 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$9,750.00) of the civil penalty to the  
24 Office of Environmental Health Hazard Assessment ("OEHHHA") for deposit in the Safe  
25 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
26 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,250.00) of the civil penalty.

27 4.3 \$4,495.12 shall be distributed to ERC as reimbursement to ERC for reasonable  
28 costs incurred in bringing this action.

1           4.4     \$6,570.06 shall be distributed to ERC as an Additional Settlement Payment  
2 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
3 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
4 allegedly caused by Defendant in this matter. These activities are detailed  
5 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic  
6 chemicals in dietary supplement products in California. ERC's activities have had, and will  
7 continue to have, a direct and primary effect within the State of California because California  
8 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary  
9 supplements and/or by providing clear and reasonable warnings to California consumers prior  
10 to ingestion of the products.

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



1 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
2 that submitted the product).

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

8 4.5 \$10,934.82 shall be distributed to ERC for its in-house legal fees. Except as  
9 explicitly provided herein, each Party shall bear its own fees and costs.

10 4.6 In the event that USN NA fails to remit the Total Settlement Amount owed  
11 under Section 4 of this Consent Judgment on or before the Due Date, USN NA shall be  
12 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
13 provide written notice of the delinquency to USN NA via electronic mail. If USN NA fails to  
14 deliver the Total Settlement Amount within five (5) days from the written notice, the Total  
15 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the  
16 California Code of Civil Procedure section 685.010. Additionally, USN NA agrees to pay  
17 ERC's reasonable attorneys' fees and costs for any efforts to collect the payment due under  
18 this Consent Judgment.

## 19 5. MODIFICATION OF CONSENT JUDGMENT

20 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by  
21 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
22 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
23 modified consent judgment.

24 5.2 If USN NA seeks to modify this Consent Judgment under Section 5.1, then USN  
25 NA must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet  
26 and confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
27 written notice to USN NA within thirty (30) days of receiving the Notice of Intent. If ERC  
28 notifies USN NA in a timely manner of ERC's intent to meet and confer, then the Parties shall

1 meet and confer in good faith as required in this Section. The Parties shall meet in person or  
2 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.  
3 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall  
4 provide to USN NA a written basis for its position. The Parties shall continue to meet and  
5 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should  
6 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
7 confer period.

8       5.3 Where the meet-and-confer process does not lead to a joint motion or  
9 application in support of a modification of the Consent Judgment, then either Party may seek  
10 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any  
11 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
12 section 1021.5.

13 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
14 **JUDGMENT**

15       6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or  
16 terminate this Consent Judgment.

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

25 **7. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
28 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers.

1 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
2 application to any Covered Product which is distributed or sold exclusively outside the State of  
3 California and which is not used by California consumers.

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

5 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
6 on behalf of itself and in the public interest, and USN NA and its respective officers, directors,  
7 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
8 franchisees, licensees, customers (not including private label customers of USN NA),  
9 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
10 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
11 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
12 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
13 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
14 asserted, or that could have been asserted from the handling, use, or consumption of the  
15 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
16 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
17 lead up to and including the Effective Date.

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

24 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
25 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
26 discovered. ERC on behalf of itself only, and USN NA on behalf of itself only, acknowledge  
27 that this Consent Judgment is expressly intended to cover and include all such claims up  
28 through and including the Effective Date, including all rights of action therefore. ERC and

1 USN NA acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
 2 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
 3 unknown claims. California Civil Code section 1542 reads as follows:

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

8 ERC on behalf of itself only, and USN NA on behalf of itself only, acknowledge and  
 9 understand the significance and consequences of this specific waiver of California Civil Code  
 10 section 1542.

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

14 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or  
 15 environmental exposures arising under Proposition 65, nor shall it apply to any of USN NA's  
 16 products other than the Covered Products.

17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **10. GOVERNING LAW**

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

24 **11. PROVISION OF NOTICE**

25 All notices required to be given to either Party to this Consent Judgment by the other shall  
 26 be in writing and sent to the following agents listed below via first-class mail or via electronic  
 27 mail where required. Courtesy copies via email may also be sent.

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

2 Chris Heptinstall, Executive Director, Environmental Research Center  
3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Ph: (619) 500-3090  
6 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

7 With a copy to:  
8 Charles W. Poss  
9 Environmental Research Center, Inc.  
10 3111 Camino Del Rio North, Suite 400  
11 San Diego, CA 92108  
12 Ph: (619) 500-3090  
13 Email: [charles.poss@erc501c3.org](mailto:charles.poss@erc501c3.org)

14 **FOR USN NORTH AMERICA, INC.**  
15 2400 E. Commercial Blvd., Suite 410  
16 Fort Lauderdale, FL 33308

17 With a copy to:  
18 Erica W. Stump  
19 Erica W. Stump, P.A.  
20 110 E. Broward Blvd., Suite 1700  
21 Fort Lauderdale, FL 33301  
22 Ph: (954) 828-2334  
23 Email: [erica@ericawstump.com](mailto:erica@ericawstump.com)

24 **12. COURT APPROVAL**

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

28 12.2 If the California Attorney General objects to any term in this Consent Judgment,  
the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
prior to the hearing on the motion.

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

**13. EXECUTION AND COUNTERPARTS**

This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
2 as the original signature.

#### 3 **14. DRAFTING**

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

#### 12 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

#### 17 **16. ENFORCEMENT**

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

#### 26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 17.1 This Consent Judgment contains the sole and entire agreement and  
28 understanding of the Parties with respect to the entire subject matter herein, and any and all

1 prior discussions, negotiations, commitments, and understandings related hereto. No  
 2 representations, oral or otherwise, express or implied, other than those contained herein have  
 3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
 4 herein, shall be deemed to exist or to bind any Party.

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

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

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

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

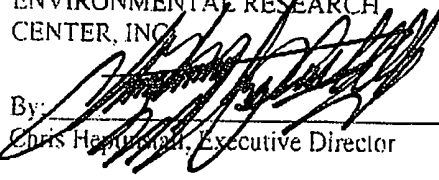
15       (2) Make the findings pursuant to California Health and Safety Code section  
 16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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1 IT IS SO STIPULATED:

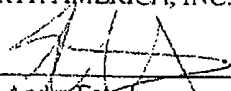
2 Dated: 10/9/, 2019

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Hapton, Executive Director

6 Dated: Oct. 4, 2019

USN NORTH AMERICA, INC.

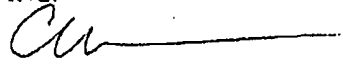
By:   
Its: Director of Operations

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17 APPROVED AS TO FORM:

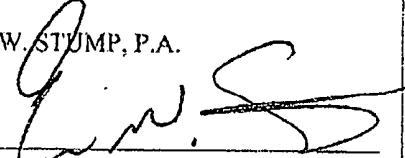
19 Dated: October 7, 2019

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Charles W. Poss  
In-House Counsel

24 Dated: October 8, 2019

ERICA W. STUMP, P.A.

By:   
Erica W. Stump  
Attorney for USN North America, Inc.

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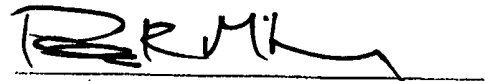
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**ORDER AND JUDGMENT**

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

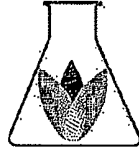
IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: Dec. 17, 2019

  
\_\_\_\_\_  
Judge of the Superior Court

**PATRICK R. MCKINNEY II**

# **EXHIBIT A**



## Environmental Research Center

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

April 30, 2019

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

Dear Alleged Violators 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 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 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 Violators identified below.

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

USN North America, Inc.  
Ultimate Sports Nutrition (Pty) Ltd  
Speed Motor Express of Western New York Inc., individually and dba Speed Global Services

**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. USN Cutting Edge Series Low Carb Diet Whey Isolate Vanilla - Lead
2. USN Cutting Edge Series Low Carb Diet Whey Isolate Chocolate - Lead
3. USN Bluelab 100% Whey Ultra-Premium Whey Protein Powder Wheytella Chocolate & Hazelnut Flavor - Lead

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

April 30, 2019

Page 2

4. USN Cutting Edge Series Low Carb Diet Whey Isolate Cinnamon Bun - Lead
5. USN Anabolic Grow Vanilla Ice Cream - Lead
6. USN Energizing Amino Stim Blue Raspberry - Lead
7. USN Energizing Amino Stim Pink Lemonade - Lead
8. USN Energizing Amino Stim Fruit Punch - Lead
9. USN Trust Protein Bar Peanut Butter - Lead
10. USN Trust Protein Bar Chocolate Coconut - Lead
11. USN Hardcore Anabolic All-In-One Mass The Ultimate High-Impact Mass Gainer Cookies & Cream - Lead
12. USN Hardcore Anabolic All-In-One Mass The Ultimate High-Impact Mass Gainer Chocolate - Lead
13. USN Hardcore Anabolic All-In-One Mass The Ultimate High-Impact Mass Gainer Vanilla Ice Cream - Lead
14. USN Hardcore Anabolic All-In-One Mass The Ultimate High-Impact Mass Gainer Chocolate Peanut Butter - Lead
15. USN Energizing Amino Stim Acai Berry - Lead
16. USN Energizing Amino Stim Mango Pineapple - Lead
17. USN Ultrabolic Mass All-In-One Gainer Chocolate - Lead
18. USN Premium 100% Whey Protein Chocolate Rich Molten Flavor - Lead
19. USN Anabolic Grow All-In-One Lean Gainer Chocolate Peanut Butter - 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 April 30, 2016, 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 Violators violated Proposition 65 because they 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 Violators 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.

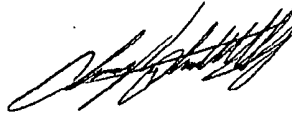
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

April 30, 2019

Page 3

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 USN North America, Inc., Ultimate Sports Nutrition (Pty) Ltd,  
Speed Motor Express of Western New York Inc., individually and dba Speed Global Services,  
and their Registered Agents for Service of Process only)

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

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

April 30, 2019

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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by USN North America, Inc., Ultimate Sports Nutrition (Pty) Ltd, and Speed Motor Express of Western New York Inc., individually and dba Speed Global Services**

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 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 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: April 30, 2019

---

Chris Heptinstall

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

April 30, 2019

Page 5

**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 30, 2019, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
USN North America, Inc.  
4755 Technology Way, Ste 104  
Boca Raton, FL 33431

Current President or CEO  
USN North America, Inc.  
1953 Kenmore Ave  
Buffalo, NY 14217

Current President or CEO  
USN North America, Inc.  
1560 Sawgrass Corporate Parkway, 4<sup>th</sup> Fl  
Sunrise, FL 33323

Jeanandre Esterhuysen  
(Registered Agent for USN North America, Inc.)  
3320 Delray Bay Dr, Apt. 313  
Delray Beach, FL 33483

Current President or CEO  
USN North America, Inc.  
110 E Broward Blvd, Ste 1700  
Fort Lauderdale, FL 33301

The Corporation Trust Company  
(Registered Agent for USN North America, Inc.)  
Corporation Trust Center  
1209 N Orange St  
Wilmington, DE 19801

Current President or CEO  
Ultimate Sports Nutrition (Pty) Ltd  
Building C, 2<sup>nd</sup> Floor  
Southdowns Office Park  
21 Karee St, Irene Ext 54  
Pretoria 0157  
South Africa

Current President or CEO  
Ultimate Sports Nutrition (Pty) Ltd  
PO Box 14832  
Hatfield 0028  
South Africa

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
2299 Kenmore Avenue  
Buffalo, NY 14207

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
2400 Bedle Place  
Linden, NJ 07036

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
3-296 Collier Rd S, Ste B  
Thorold, ON L2V 5B6  
Canada

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
1953 Kenmore Ave  
Buffalo, NY 14217

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

April 30, 2019

Page 6

On April 30, 2019, 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 30, 2019, 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:

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

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

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

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

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

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org



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

April 30, 2019

Page 7

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

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

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

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

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

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

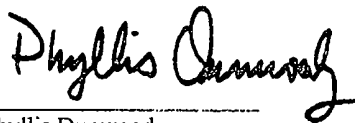
Bud Porter, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

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 April 30, 2019, 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 30, 2019, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

April 30, 2019

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Service List

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, 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  
778 Pacific St.  
Placerville, CA 95667

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, 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 95317

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, 2<sup>nd</sup>  
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  
832 12th Street, Ste 300  
Modesto, CA 95334

District Attorney, Sutter  
County  
463 2<sup>nd</sup> 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 Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

## APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

**WHAT DOES PROPOSITION 65 REQUIRE?**

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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...*

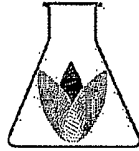
Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

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.

# **EXHIBIT B**





## Environmental Research Center

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

May 13, 2019

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

Dear Alleged Violators 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 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 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 Violators identified below.

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

USN North America, Inc.  
Ultimate Sports Nutrition (Pty) Ltd  
Speed Motor Express of Western New York Inc., individually and dba Speed Global Services

**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. USN Anabolic Grow All-In-One Lean Gainer Cookies & Cream - Lead
2. USN Bluelab 100% Whey Ultra-Premium Whey Protein Powder Vanilla Ice Cream – Lead
3. USN Bluelab 100% Whey Ultra-Premium Whey Protein Powder PB&J Peanut Butter & Jelly - Lead

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

May 13, 2019

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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.

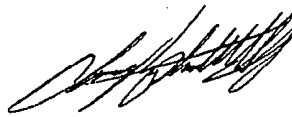
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 13, 2016, 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 Violators violated Proposition 65 because they 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 Violators 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 USN North America, Inc., Ultimate Sports Nutrition (Pty) Ltd,  
Speed Motor Express of Western New York Inc., individually and dba Speed Global Services,  
and their Registered Agents for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 13, 2019  
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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by USN North America, Inc., Ultimate Sports Nutrition (Pty) Ltd, and Speed Motor Express of Western New York Inc., individually and dba Speed Global Services**

I, Chris Heptinstall, declare:

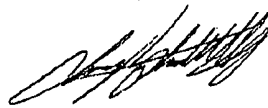
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am 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 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: May 13, 2019

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Chris Heptinstall

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

May 13, 2019

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**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 May 13, 2019, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
USN North America, Inc.  
4755 Technology Way, Ste 104  
Boca Raton, FL 33431

Current President or CEO  
USN North America, Inc.  
1953 Kenmore Ave  
Buffalo, NY 14217

Current President or CEO  
USN North America, Inc.  
1560 Sawgrass Corporate Parkway, 4<sup>th</sup> Fl  
Sunrise, FL 33323

Jeanandre Esterhuysen  
(Registered Agent for USN North America, Inc.)  
3320 Delray Bay Dr, Apt. 313  
Delray Beach, FL 33483

Current President or CEO  
USN North America, Inc.  
110 E Broward Blvd, Ste 1700  
Fort Lauderdale, FL 33301

The Corporation Trust Company  
(Registered Agent for USN North America, Inc.)  
Corporation Trust Center  
1209 N Orange St  
Wilmington, DE 19801

Current President or CEO  
Ultimate Sports Nutrition (Pty) Ltd  
Building C, 2<sup>nd</sup> Floor  
Southdowns Office Park  
21 Karee St, Irene Ext 54  
Pretoria 0157  
South Africa

Current President or CEO  
Ultimate Sports Nutrition (Pty) Ltd  
PO Box 14832  
Hatfield 0028  
South Africa

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
2299 Kenmore Avenue  
Buffalo, NY 14207

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
2400 Bedle Place  
Linden, NJ 07036

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
3-296 Collier Rd S, Ste B  
Thorold, ON L2V 5B6  
Canada

Current President or CEO  
Speed Motor Express of Western New York Inc.,  
individually and dba Speed Global Services  
1953 Kenmore Ave  
Buffalo, NY 14217

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

May 13, 2019

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On May 13, 2019, 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 May 13, 2019, 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:

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

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

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

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

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

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 13, 2019  
Page 6

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

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

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

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

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

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

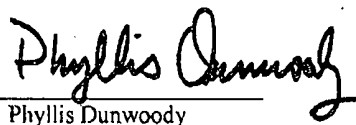
Bud Porter, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

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 May 13, 2019, 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 May 13, 2019, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

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, 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  
 778 Pacific St.  
 Placerville, CA 95667

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

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

District Attorney, Humboldt  
 County  
 825 5th Street 4<sup>th</sup> Floor  
 Eureka, CA 95501

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

District Attorney, 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, 2<sup>nd</sup>  
 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  
 832 12th Street, Ste 300  
 Modesto, CA 95354

District Attorney, Sutter  
 County  
 463 2<sup>nd</sup> 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 Jose City Attorney's  
 Office  
 200 East Santa Clara Street,  
 16th Floor  
 San Jose, CA 95113

## APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

**WHAT DOES PROPOSITION 65 REQUIRE?**

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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



female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto: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.