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**FILED**  
**ALAMEDA COUNTY**

SEP 08 2020

CLERK OF THE SUPERIOR COURT

By Michelle Hawkins  
Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

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

**Plaintiff,**

**vs.**

**KULI KULI, INC. and DOES 1-100**

**Defendants.**

**CASE NO. RG20061986**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 22, 2020

Trial Date: None set

**1. INTRODUCTION**

1.1 On May 20, 2020, 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 Kuli Kuli, Inc. ("Kuli Kuli") and Does 1-100. In this action, ERC alleges that a product manufactured, distributed and/or sold by Kuli Kuli in the State of

1 California contains cadmium, a chemical listed under Proposition 65 as a carcinogen and  
2 reproductive toxin, and allegedly exposes consumers to this chemical at a level requiring a  
3 Proposition 65 warning. This product (referred to hereinafter as a "Covered Product") is: Kuli  
4 Kuli Moringa Energy Bar Dark Chocolate.

5       **1.2**     ERC and Kuli Kuli are hereinafter referred to individually as a "Party" or  
6 collectively as the "Parties."

7       **1.3**     ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
8 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
9 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
10 and encouraging corporate responsibility.

11       **1.4**     For purposes of this Consent Judgment, the Parties agree that Kuli Kuli is a  
12 business entity that has employed ten or more persons at all times relevant to this action, and  
13 qualifies as a "person in the course of doing business" within the meaning of Proposition 65. Kuli  
14 Kuli manufactures, distributes, and/or sells the Covered Product.

15       **1.5**     The Complaint is based on allegations contained in ERC's Notice of Violation  
16 dated December 23, 2019 that was served on the California Attorney General, other public  
17 enforcers, and Kuli Kuli ("Notice"). A true and correct copy of the 60-Day Notice dated  
18 December 23, 2019 is attached hereto as Exhibit A and incorporated herein by reference.  
19 More than 60 days have passed since the Notice was served on the Attorney General, public  
20 enforcers, and Kuli Kuli, and no designated governmental entity has filed a Complaint against  
21 Kuli Kuli with regard to the Covered Product or the alleged violations.

22       **1.6**     ERC's Notice and Complaint allege that California consumers' use of the  
23 Covered Product exposes them to cadmium without their first receiving a clear and reasonable  
24 warning by Kuli Kuli, which ERC alleges is in violation of California Health and Safety Code  
25 section 25249.6. Kuli Kuli denies all material, factual, and legal allegations contained in the  
26 Notice and Complaint.

27       **1.7**     The Parties have entered into this Consent Judgment as a full, final and binding  
28 resolution of all claims, demands, and allegations arising out of the Notice and Complaint and

1 for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment nor  
2 compliance with this Consent Judgment shall constitute or be construed as an admission by any  
3 of the Parties or by any of their respective officers, directors, shareholders, employees, agents,  
4 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,  
5 distributors, wholesalers, Online Marketplace Hosts (an entity that hosts an online marketplace  
6 but that never has physical possession of the products sold through its online marketplace), or  
7 retailers of any fact, issue of law, or violation of law.

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

11       **1.9** The Effective Date of this Consent Judgment is the date on which it is approved  
12 for entry as a Judgment by this Court.

## 13       **2. JURISDICTION AND VENUE**

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

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

22       **3.1** Beginning on the Effective Date and continuing thereafter, Kuli Kuli shall be  
23 permanently enjoined from manufacturing for sale in the State of California, "Distributing into  
24 the State of California," or directly selling in the State of California, any Covered Products  
25 manufactured after July 1, 2020 which expose a person to a "Daily Cadmium Exposure Level"  
26 (as defined below) of more than 4.1 micrograms of cadmium per day unless they meet the  
27 warning requirements under Section 3.2.

28       **3.1.1** As used in this Consent Judgment, the terms "Distributing into the State

of California” and “Distributed into the State of California” shall mean to directly ship a Covered Product manufactured after July 1, 2020 into California for sale in California or to sell a Covered Product manufactured after July 1, 2020 to a distributor that Kuli Kuli knows will sell the Covered Product in California.

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

### **3.2 Clear and Reasonable Warnings**


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

#### **OPTION 1:**

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

Or:

#### **OPTION 2:**

 **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

Kuli Kuli shall use the phrase “cancer and” in the Warning if Kuli Kuli knows or has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. For the Option 1 Warning, Kuli Kuli may include the names of additional chemicals in the Warning if they are present in the Covered Product at a level that Kuli Kuli reasonably believes would require a Proposition 65 Warning. For the Option 2 Warning, the entire Warning

1 must be in a type size no smaller than the largest type size used for other "consumer information"  
2 (which includes warnings, directions for use, ingredient lists, and nutritional information but does  
3 not include the brand name, product name, company name, location of manufacture, or product  
4 advertising) on the product. In no case shall the Warning appear in a type size smaller than 6-  
5 point type. Further, for the Option 2 Warning, a symbol consisting of a black exclamation point in  
6 a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the  
7 Warning, in a size no smaller than the height of the word "**WARNING.**" Where the label for the  
8 Covered Product is not printed using the color yellow, the symbol may be printed in black and  
9 white.

10 The Warning shall be prominently displayed on the label of each Covered Product  
11 offered for sale in California and if the Warning is provided on the label, it must be set off  
12 from other surrounding information and enclosed in a box. In addition, for any Covered  
13 Product sold over the internet when a California delivery address is indicated, the Warning  
14 shall be provided either by including the Warning on the primary product display page or  
15 checkout page or by otherwise prominently displaying the Warning to the purchaser during the  
16 checkout process prior to completing the purchase. An asterisk or other identifying method  
17 must be utilized to identify which product on the checkout page is subject to the Warning. A  
18 Warning on a website is not prominently displayed if the purchaser must search for it in the  
19 general content of the website. Given Kuli Kuli's lack of control over third-party websites, the  
20 online warning requirements expressed in this Section apply only to Covered Products sold  
21 through Kuli Kuli's website, so long as Kuli Kuli complies with the requirements of 27  
22 California Code of Regulations section 25600.2 (in effect on the date of entry of this Consent  
23 Judgment).

24 The Warning shall be at least the same size as the largest of any other health or safety  
25 warnings also appearing on the website or on the label of the Covered Product and the word  
26 "**WARNING**" shall be in all capital letters and in bold print.

27 Kuli Kuli must display the above Warning with such conspicuousness, as compared with  
28 other words, statements or designs on the label, or on its website, if applicable, to render the

1 Warning likely to be read and understood by an ordinary individual under customary conditions  
2 of purchase or use of the Covered Product. No statements intended to or likely to have the effect  
3 of diminishing the impact of the Warning on the average lay person shall accompany the  
4 Warning.

5 For purposes of this Section, the term "label" shall mean a display of written, printed or  
6 graphic material that is printed on or affixed to the Covered Product or its immediate container or  
7 wrapper.

### 8 **3.3 Conforming Covered Products**

9 A Conforming Covered Product is a Covered Product manufactured after July 1, 2020 for  
10 which the "Daily Cadmium Exposure Level" is no more than 4.1 micrograms of cadmium per day  
11 as determined by the quality control methodology described in Section 3.4.

### 12 **3.4 Testing and Quality Control Methodology**

13 **3.4.1** Subject to Section 3.4.8, beginning within one year of the Effective Date,  
14 Kuli Kuli shall arrange for cadmium testing of Covered Products manufactured after July 1, 2020  
15 at least once a year for a minimum of three consecutive years by arranging for testing of three  
16 randomly selected samples of the Covered Products manufactured after July 1, 2020, in the form  
17 intended for sale to the end-user, which Kuli Kuli intends to sell or is manufacturing for sale in  
18 California, directly selling to a consumer in California or "Distributing into the State of  
19 California." If tests conducted pursuant to this Section demonstrate that no Warning is required  
20 for the Covered Product during each of three consecutive years, then the testing requirements of  
21 this Section will no longer be required as to the Covered Product.

22 **3.4.2** For purposes of measuring the "Daily Cadmium Exposure Level," the  
23 highest cadmium detection result of the three (3) randomly selected samples of the Covered  
24 Product will be controlling.

25 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
26 laboratory method that complies with the performance and quality control factors appropriate for  
27 the method used, including limit of detection, qualification, accuracy, and precision that meets  
28 the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a

1 limit of quantification of less than or equal to 0.010 mg/kg.

2           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
3 independent third party laboratory certified by the California Environmental Laboratory  
4 Accreditation Program or an independent third-party laboratory that is registered with the United  
5 States Food & Drug Administration.

6           **3.4.5** Nothing in this Consent Judgment shall limit Kuli Kuli's ability to  
7 conduct, or require that others conduct, additional testing of the Covered Product, including the  
8 raw materials used in its manufacture.

9           **3.4.6** Within sixty (60) days of ERC's written request, Kuli Kuli shall deliver  
10 lab reports obtained pursuant to Section 3.4 to ERC. Kuli Kuli shall retain all test results and  
11 documentation for a period of two years from the date of each test

12           **3.4.7** The testing and reporting requirements of Section 3.4 shall not apply to  
13 any Covered Product for which a Warning is provided, continuously and without interruption  
14 from the Effective Date, in accordance with Section 3. In the event a Warning is provided after  
15 the Effective Date but Kuli Kuli thereafter ceases to provide the Warning, the testing and  
16 reporting requirements of Section 3.4 shall apply beginning immediately after the date the  
17 Warning ceases to be provided or one year after the Effective Date, whichever date is later,  
18 unless Kuli Kuli can show to the satisfaction of ERC that the cessation in providing the Warning  
19 was a temporary error that was resolved when discovered.

20           **3.4.8** In the event the Covered Product is discontinued from production, the  
21 testing and reporting requirements of Section 3.4 shall cease to apply immediately upon the  
22 date of discontinuance of the Covered Product. However, if, after discontinuance, the Covered  
23 Product is brought back into production, the testing and reporting requirements of Section 3.4  
24 shall immediately resume and continue for any period of time that remained as of the date of  
25 discontinuance.

26 **4. SETTLEMENT PAYMENT**

27           **4.1** In full satisfaction of all potential civil penalties, additional settlement  
28 payments, attorney's fees, and costs, Kuli Kuli shall make a total payment of \$15,000.00

1 (“Total Settlement Amount”) to ERC within seven (7) days of the Effective Date (“Due  
2 Date”). Kuli Kuli shall make this payment by wire transfer to ERC’s account, for which ERC  
3 will give Kuli Kuli the necessary account information. The Total Settlement Amount shall be  
4 apportioned as follows:

5       **4.2**     \$4,525.00 shall be considered a civil penalty pursuant to California Health and  
6 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$3,393.75) of the civil penalty to the  
7 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
8 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
9 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,131.25) of the civil penalty.

10       **4.3**     \$2,184.97 shall be distributed to ERC as reimbursement to ERC for reasonable  
11 costs incurred in bringing this action.

12       **4.4**     \$3,367.54 shall be distributed to ERC as an Additional Settlement Payment  
13 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
14 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
15 allegedly caused by Defendant in this matter. These activities are detailed  
16 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic  
17 chemicals in dietary supplement products in California. ERC’s activities have had, and will  
18 continue to have, a direct and primary effect within the State of California because California  
19 consumers will be benefitted by the reduction and/or elimination of exposure to cadmium in  
20 dietary supplements and/or by providing clear and reasonable warnings to California  
21 consumers prior to ingestion of the products.

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



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

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

19 4.5 \$4,922.49 shall be distributed to ERC for its in-house legal fees.

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

28 4.7 Except as expressly set forth in this Section 4, each Party shall bear its own

1 costs, expenses, and attorneys' fees.

2 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

19 **5.3** In the event that Kuli Kuli initiates or otherwise requests a modification under  
20 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
21 modification of the Consent Judgment, Kuli Kuli shall reimburse ERC its costs and reasonable  
22 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the  
23 motion or application. ERC shall not be reimbursed for costs or attorney's fees for an  
24 uncontested motion, or for a ministerial motion (such as a change in name or contact  
25 information) or if ERC does not expend more than two (2) hours of attorney time in the joint  
26 motion.

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

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

5             **6.2**     If ERC alleges that any Covered Product manufactured after July 1, 2020 fails  
6 to qualify as a Conforming Covered Product (for which ERC alleges that no Warning has been  
7 provided), then ERC shall inform Kuli Kuli in a reasonably prompt manner of its test results,  
8 including information sufficient to permit Kuli Kuli to identify the Covered Product at issue.  
9 Kuli Kuli shall, within sixty (60) days following such notice, provide ERC with testing  
10 information, from an independent third party laboratory meeting the requirements of Sections  
11 3.4.3 and 3.4.4, demonstrating Kuli Kuli's compliance with the Consent Judgment. The Parties  
12 shall first attempt to resolve the matter prior to ERC taking any further legal action.

13     **7.     APPLICATION OF CONSENT JUDGMENT**

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

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

21             **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC,  
22 on behalf of itself and in the public interest, and Kuli Kuli and its respective owners, officers,  
23 directors, affiliates, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
24 suppliers, franchisees, licensees, customers (not including private label customers of Kuli Kuli  
25 unless the private label product is labeled in such a way that it clearly shows that it is  
26 manufactured, packaged, sold, or distributed by Kuli Kuli), distributors, wholesalers, retailers,  
27 Online Marketplace Hosts, and all other upstream and downstream entities in the distribution  
28 chain of the Covered Product, and the predecessors, successors, and assigns of any of them

1 (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby  
2 fully releases and discharges all of the Released Parties from any and all claims, actions,  
3 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
4 asserted, or that could have been asserted from the handling, use, sale, purchase, and/or  
5 consumption of the Covered Product, as to any alleged violation of Proposition 65 or its  
6 implementing regulations arising from claims asserted in the Notice and Complaint up to and  
7 including the Effective Date.

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

14       **8.3**       It is possible that other claims not known to the Parties, arising out of the facts  
15 alleged in the Notice and Complaint, and relating to the Covered Product, will develop or be  
16 discovered. ERC on behalf of itself only, and Kuli Kuli on behalf of itself only, acknowledge  
17 that this Consent Judgment is expressly intended to cover and include all such claims up  
18 through and including the Effective Date, including all rights of action therefor. ERC and Kuli  
19 Kuli acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown  
20 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
21 claims. California Civil Code section 1542 reads as follows:

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

28       ERC on behalf of itself only, and Kuli Kuli on behalf of itself only, acknowledge and  
understand the significance and consequences of this specific waiver of California Civil Code  
section 1542.

1           **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance with Proposition 65 by the Released Parties regarding alleged exposures  
3 to cadmium in the Covered Product as set forth in and arising out of the Notice and Complaint.

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

7           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

11          **10. GOVERNING LAW**

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

14          **11. PROVISION OF NOTICE**

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

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

19 Chris Heptinstall, Executive Director, Environmental Research Center  
20 3111 Camino Del Rio North, Suite 400  
21 San Diego, CA 92108  
22 Ph: (619) 500-3090  
23 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

24 With a copy to:  
25 Charles W. Poss  
26 Environmental Research Center, Inc.  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Ph: (619) 500-3090  
Email: [charles.poss@erc501c3.org](mailto:charles.poss@erc501c3.org)

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1 **FOR KULI KULI, INC.:**

2 Lisa Curtis  
3 Kuli Kuli  
4 600 Grand Ave, Suite 460  
Oakland, CA 94611

5 With a copy to:  
6 Ann G. Grimaldi  
7 Jennifer K. Singh  
8 Grimaldi Law Offices  
535 Mission Street, 14<sup>th</sup> Floor  
9 San Francisco, CA 94105  
Ph: (415) 463-2659  
10 Email: jennifer@grimaldilawoffices.com

11 **12. COURT APPROVAL**

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

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

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

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

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

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

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

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

10 **16. ENFORCEMENT**

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

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

**IT IS SO STIPULATED:**

Dated: 6/21, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: [Signature]  
Chris Hepanstan, Executive Director

Dated: 6/3, 2020

KULI KULI, INC.

By: [Signature]  
Lisa Curtis  
Its: Founder & CEO

**APPROVED AS TO FORM:**

Dated: June 2, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: [Signature]  
Charles W. Poss  
In-House Counsel for Plaintiff

Dated: June 3, 2020

GRIMALDI LAW OFFICES

By: [Signature]  
Jennifer K. Singh  
Attorney for Defendant Kuli Kuli, Inc.

///

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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: SEP 03 2020

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

# **EXHIBIT A**

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**Environmental Research Center**

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

December 23, 2019

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Kuli Kuli, Inc.**

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

- 1. Kuli Kuli Organic Moringa Green Smoothie With Plant Protein Chocolate Peanut Butter – Lead, Cadmium**

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
December 23, 2019  
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2. **Kuli Kuli Organic Moringa Green Smoothie With Plant Protein Dark Chocolate - Lead**
3. **Kuli Kuli Organic Moringa Green Smoothie With Plant Protein Unsweetened - Lead**
4. **Kuli Kuli Organic Moringa Green Smoothie With Plant Protein Vanilla - Lead**
5. **Kuli Kuli Organic Pure Moringa Vegetable Powder Green Superfood - Lead**
6. **Kuli Kuli Moringa Energy Bar Dark Chocolate - Cadmium**

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

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

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

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

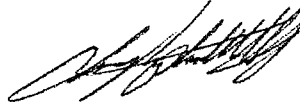
**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least December 23, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

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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 (to Kuli Kuli, Inc. and its 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.*  
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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Kuli Kuli, Inc.**

I, Chris Heptinstall, declare:

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

2. I am the Executive Director for the noticing party.

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: December 23, 2019

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Chris Heptinstall

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

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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 December 23, 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  
Kuli Kuli, Inc.  
600 Grand Avenue, Ste 410B  
Oakland, CA 94610

American Incorporators Ltd.  
(Registered Agent for Kuli Kuli, Inc.)  
1013 Centre Rd, Ste 403A  
Wilmington, DE 19805

Current President or CEO  
Kuli Kuli, Inc.  
600 Grand Avenue, Ste 321  
Oakland, CA 94610

Jordan D. Moncharmont  
(Registered Agent for Kuli Kuli, Inc.)  
600 Grand Avenue, Ste 410B  
Oakland, CA 94610

Current President or CEO  
Kuli Kuli, Inc.  
PO Box 32097  
Oakland, CA 94604

On December 23, 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 December 23, 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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
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Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

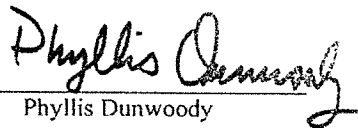


Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
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Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On December 23, 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 December 23, 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, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, El Dorado County 778 Pacific St. Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	

## 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.

Case Title: Environmental Reseach Center vs Kuli Kuli, Inc.  
Case No. RG20061986

### **CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 24405 Amador Street, Hayward, California. I served the STIPULATED CONSENT JUDGMENT by placing copies in envelopes addressed as shown below and sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

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Dated: 09/08/2020

Chad Finke  
Executive Officer/Clerk of the Superior Court

By: Michelle Hawkins  
Deputy Clerk