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FILED
Superior Court of California
County of Alameda

09/29/2022

Clad Files, Executive Officer / Clerk of the Court

By: *A. Tumonong* Deputy
A. Tumonong

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

FIT FOODS LTD.; and DOES 1-100

Defendants.

CASE NO. RG21100426

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 27, 2021

Trial Date: None set

1. INTRODUCTION

1.1 On May 27, 2021, 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 ("Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against Fit Foods Ltd. ("Fit Foods") and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by Fit Foods contain lead

1 and/or cadmium and/or mercury, chemicals listed under Proposition 65 as carcinogens and/or
2 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
3 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
4 collectively as “Covered Products”) are: (1) North Coast Naturals Plant-Based Essentials
5 Complete Vege Pro-7 Chocolate (lead), (2) North Coast Naturals Plant-Based Essentials
6 Complete Vege Pro-7 Vanilla (lead), (3) Mutant Dark Series Mass XXXtreme 2500 Cookies &
7 Cream Flavor (lead), (4) Mutant Dark Series Mass Extreme 2500 Vanilla Ice Cream Flavor
8 (lead), (5) Mutant Dark Series Mass Extreme 2500 Triple Chocolate Flavor (lead, cadmium),
9 (6) North Coast Naturals Plant-Based Essentials Ultimate Daily Greens Mixed Berry & Citrus
10 (lead), (7) North Coast Naturals Plant-Based Essentials Ultimate Daily Cleanse Unflavored
11 (lead), (8) North Coast Naturals Plant-Based Essentials Boosted Plant Protein Vanilla (lead),
12 (9) North Coast Naturals Plant-Based Essentials Boosted Vegan All-In-One Vanilla (lead) ,
13 (10) North Coast Naturals Plant-Based Essentials Cold Pressed Pumpkin Protein Pumpkin
14 Spice (lead), (11) North Coast Naturals Organic Sprouted Raw Brown Rice Protein
15 Unflavoured (lead), (12) Whey Gourmet High Protein Shake Chocolate (lead), (13) PVL Pure
16 Vita Labs Full Potency DAA+ Unflavoured (lead), (14) North Coast Naturals Boosted Iso
17 Protein 100 Whey Protein Isolate Chocolate (lead, mercury), (15) North Coast Naturals Cold
18 Pressed Pumpkin Protein Pumpkin Seed Protein Unflavored (lead), (16) North Coast Naturals
19 Boosted Vegan All-In-One Nutritious Whole-Food Shake Chocolate (lead, cadmium, and
20 mercury), and (17) North Coast Naturals Boosted Plant Protein Fermented & Sprouted
21 Performance Protein Chocolate (lead).

22 **1.2** ERC and Fit Foods are hereinafter referred to individually as a “Party” or
23 collectively as the “Parties.”

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

28 **1.4** For purposes of this Consent Judgment, the Parties agree that Fit Foods is a

1 business entity that has employed ten or more persons at all times relevant to this action, and
2 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. Fit
3 Foods manufactures, distributes, and/or sells the Covered Products.

4 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
5 dated January 13, 2021 and March 4, 2021 that were served on the California Attorney
6 General, other public enforcers, and Fit Foods (“Notices”). The Parties stipulate to amend the
7 Complaint to include ERC’s Notice of Violation dated July 16, 2021, and all further references
8 to “Complaint” shall be to the Complaint as so amended. True and correct copies of the
9 Notices dated January 13, 2021, March 4, 2021, and July 16, 2021 are attached hereto as
10 **Exhibits A, B, and C** and each is incorporated herein by reference. More than 60 days have
11 passed since the Notices were served on the Attorney General, public enforcers, and Fit Foods
12 and no designated governmental entity has filed a complaint against Fit Foods with regard to
13 the Covered Products or the alleged violations.

14 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
15 California consumers exposes them to lead and/or cadmium and/or mercury without first
16 receiving clear and reasonable warnings from Fit Foods, which is in violation of California
17 Health and Safety Code section 25249.6. Fit Foods denies all material allegations contained in
18 the Notices and Complaint.

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

26 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
28 any current or future legal proceeding unrelated to these proceedings.

1 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
2 as a Judgment by this Court.

3 **2. JURISDICTION AND VENUE**

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

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

12 **3.1** Beginning on the Effective Date, Fit Foods shall be permanently enjoined from
13 manufacturing for sale in the State of California, “Distributing into the State of California,” or
14 directly selling in the State of California, any Covered Product that exposes a person to a
15 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or “Daily
16 Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day and/or “Daily
17 Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it meets the
18 warning requirements under Section 3.2.

19 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
20 of California” shall mean to directly ship a Covered Product into California for sale in
21 California or to sell a Covered Product to a distributor that Fit Foods knows or has reason to
22 know will sell the Covered Product in California.

23 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
24 Level” shall be measured in micrograms, and shall be calculated using the following formula:
25 micrograms of lead per gram of product, multiplied by grams of product per serving of the
26 product (using the largest serving size appearing on the product label), multiplied by servings
27 of the product per day (using the largest number of recommended daily servings appearing on
28 the label, if applicable), which equals micrograms of lead exposure per day, excluding,

1 pursuant to Section 3.1.3, amounts of naturally occurring lead in the ingredients listed in **Table**
2 **1** below. If the label contains no recommended daily servings, then the number of
3 recommended daily servings shall be one.

4 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product, Fit
5 Foods shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in
6 any ingredient listed in **Table 1** that is contained in that Covered Product under the following
7 conditions: For each year that Fit Foods claims entitlement to a “naturally occurring”
8 allowance, Fit Foods shall provide ERC with the following information: (a) Fit Foods must
9 produce to ERC a list of each ingredient in the Covered Product for which a naturally
10 occurring allowance is claimed, and the amount, measured in grams, of each such ingredient
11 contained therein, for which a “naturally occurring” allowance is claimed; (b) Fit Foods must
12 provide ERC with documentation of laboratory testing that complies with Sections 3.4.3 and
13 3.4.4 and that shows the amount of lead, if any, contained in any ingredient listed in **Table 1**
14 that is contained in the Covered Product and for which Fit Foods intends to deduct “naturally
15 occurring” lead; (c) If the laboratory testing reveals the presence of lead in any ingredient
16 listed in **Table 1** that is contained in the Covered Product, Fit Foods shall be entitled to deduct
17 up to the full amount of the allowance for that ingredient, as listed in **Table 1**, but not to
18 exceed the total amount of lead actually contained in that ingredient in the Covered Product;
19 and (d) If the Covered Product does not contain an ingredient listed in **Table 1**, Fit Foods shall
20 not be entitled to a deduction for “naturally occurring” lead in the Covered Product for that
21 ingredient. The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC
22 within thirty (30) days of the Effective Date, or anniversary thereof, for any year that Fit Foods
23 shall claim entitlement to the “naturally occurring” allowance.

24 **TABLE 1**

INGREDIENT	NATURALLY OCCURING AMOUNT OF LEAD
Calcium	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram

1	Magnesium Oxide	Up to 0.4 micrograms/gram
2	Magnesium Carbonate	Up to 0.332 micrograms/gram
3	Magnesium Hydroxide	Up to 0.4 micrograms/gram
4	Zinc Gluconate	Up to 0.8 micrograms/gram
5	Potassium Chloride	Up to 1.1 micrograms/gram
6	Cocoa-powder	Up to 1.0 micrograms/gram

8 In the event that a dispute arises with respect to compliance with the terms of this
9 Consent Judgment as to any contribution from naturally occurring lead levels under this
10 Section 3.1.3, the Parties shall employ good faith efforts to seek a confidentiality agreement
11 that governs access to and disclosure of the information required by Sections 3.1.3 (a) and (b).
12 Should a dispute arise, this Section is subject to the meet and confer requirements set forth in
13 Section 15 below.

14 **3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
17 the product (using the largest serving size appearing on the product label), multiplied by
18 servings of the product per day (using the largest number of recommended daily servings
19 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
20 contains no recommended daily servings, then the number of recommended daily servings
21 shall be one.

22 **3.1.5** For purposes of this Consent Judgment, the “Daily Mercury Exposure
23 Level” shall be measured in micrograms, and shall be calculated using the following formula:
24 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
25 product (using the largest serving size appearing on the product label), multiplied by servings
26 of the product per day (using the largest number of recommended daily servings appearing on
27 the label), which equals micrograms of mercury exposure per day. If the label contains no
28 recommended daily servings, then the number of recommended daily servings shall be one.

1 **3.2 Clear and Reasonable Warnings**

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

4 **OPTION 1 (Long-form Warning):**

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

8 **OPTION 2 (Short-form Warning):**



10 **WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov/food.

11 Fit Foods shall use the phrase “cancer and” in the Warning if Fit Foods has reason to
12 believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
13 determined pursuant to the quality control methodology set forth in Section 3.4 or if Fit Foods has
14 reason to believe that another Proposition 65 chemical is present which may require a cancer
15 warning. As identified in the brackets, the Option 1 Warning shall appropriately reflect whether
16 there is lead, cadmium, and/or mercury present in each of the Covered Products. For the Option 2
17 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a
18 bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than
19 the height of the word “**WARNING.**” Where the sign, label or shelf tag for the product is not
20 printed using the color yellow, the symbol may be printed in black and white.

21 The Warning shall comply with California Code of Regulations (“CCR”), Title 27,
22 Article 6, section 25602(a) (in effect on the date this Consent Judgment is signed by the
23 Parties), using one or more of the following methods:

- 24 (1) A product-specific Warning provided on a posted sign, shelf tag, or shelf sign, for
25 the consumer product at each point of display of the product;
26 (2) A product-specific Warning provided via any electronic device or process that
27 automatically provides the Warning to the purchaser prior to or during the purchase of
28 the consumer product, without requiring the purchaser to seek out the Warning. ERC

1 contends that this warning method is different from, and is not satisfied by, the warning
2 method required for Covered Products sold over the internet pursuant to California
3 Code of Regulations, Title 27, Article 6, section 25602(b);

4 (3) A Long-form Warning on the label that complies with the content requirements in
5 27 CCR §25603(a) (in effect on the date this Consent Judgment is signed by the
6 Parties); and/or

7 (4) A Short-form Warning on the label that complies with the content requirements in
8 27 CCR §25603(b) (in effect on the date this Consent Judgment is signed by the
9 Parties). If the Short-form Warning is used, the entire Warning must be in a type size
10 no smaller than the largest type size used for other consumer information on the
11 product. In no case shall the warning appear in a type size smaller than 6-point type.

12 In addition, for any Covered Product sold over the internet, the Warning shall comply with
13 California Code of Regulations, Title 27, Article 6, section 25602(b) (in effect on the date this
14 Consent Judgment is signed by the Parties), by also including either the Warning or a clearly
15 marked hyperlink using the word “**WARNING**” (so long as the hyperlink goes directly to a
16 page prominently displaying the Warning without content that detracts from the Warning) on
17 the Covered Product’s primary display page or by otherwise prominently displaying the
18 Warning to the purchaser prior to completing the purchase. If the Warning is provided using
19 the Short-form Warning label content pursuant to 27 CCR §25602(a)(4) (in effect on the date
20 this Consent Judgment is signed by the Parties), the Warning provided on the website may use
21 the same content. For purposes of this Consent Judgment, the Warning is not prominently
22 displayed if the purchaser must search for it in the general content of the website.

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

1 Fit Foods must display the above Warning with such conspicuousness, as compared with
2 other words, statements or designs on the label, or on its website, if applicable, to render the
3 Warning likely to be read and understood by an ordinary individual under customary conditions
4 of purchase or use of the product.

5 For purposes of this Consent Judgment, the term “label” means a display of written,
6 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
7 container or wrapper.

8 **3.3 Conforming Covered Products**

9 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
10 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure
11 Level” is no more than 4.1 micrograms of cadmium per day and/or the “Daily Mercury Exposure
12 Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure
13 methodologies set forth in Section 3.1 and the quality control methodology described in Section
14 3.4, and that is not known by Fit Foods to contain other chemicals that violate Proposition 65’s
15 safe harbor thresholds.

16 **3.4 Testing and Quality Control Methodology**

17 **3.4.1** Beginning within one year of the Effective Date, Fit Foods shall arrange
18 for lead, cadmium, and mercury testing of the Covered Products at least once a year for a
19 minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected
20 samples of each of the Covered Products, in the form intended for sale to the end-user, which
21 Fit Foods intends to sell or is manufacturing for sale in California, directly selling to a
22 consumer in California or “Distributing into the State of California.” If tests conducted
23 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
24 each of three (3) consecutive years, then the testing requirements of this Section will no longer
25 be required as to that Covered Product. However, if during or after the three-year testing
26 period, Fit Foods changes ingredient suppliers for any of the Covered Products and/or
27 reformulates any of the Covered Products, Fit Foods shall test that Covered Product annually
28 for at least three (3) consecutive years after such change is made.

1 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
2 “Daily Cadmium Exposure Level” and/or the “Daily Mercury Exposure Level,” the highest
3 lead and/or cadmium and/or mercury detection result of the three (3) randomly selected
4 samples of the Covered Products will be controlling.

5 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
6 laboratory method that complies with the performance and quality control factors appropriate
7 for the method used, including limit of detection and limit of quantification, sensitivity,
8 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
9 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
10 mg/kg.

11 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
12 independent third party laboratory certified by the California Environmental Laboratory
13 Accreditation Program or an independent third-party laboratory that is registered with the
14 United States Food & Drug Administration, or as otherwise agreed to in writing by the Parties.
15 Fit Foods shall retain all test results and documentation for a period of three years from the
16 date of each test. Within thirty (30) days of ERC’s written request, Fit Foods shall deliver lab
17 reports obtained pursuant to Section 3.4 to ERC.

18 **3.4.5** Nothing in this Consent Judgment shall limit Fit Foods’ ability to
19 conduct, or require that others conduct, additional testing of the Covered Products, including
20 the raw materials used in their manufacture.

21 **3.4.6** The testing and reporting requirements of Section 3.4 do not apply to any
22 Covered Product for which Fit Foods is providing a Warning, continuously and without
23 interruption from the Effective Date, pursuant to Section 3.2 of this Consent Judgment. In the
24 event a Warning is provided after the Effective Date but Fit Foods thereafter ceases to provide
25 the Warning, the testing and reporting requirements of Section 3.4 of this Consent Judgment
26 shall apply beginning within one year after the date the Warning ceases to be provided, unless Fit
27 Foods can show to the satisfaction of ERC that the cessation in providing the Warning was a
28 temporary error that was resolved when discovered.

1 **3.5 Covered Products in the Stream of Commerce**

2 The requirements of Sections 3.1 and 3.2 do not apply to Covered Products that “enter
3 the stream of commerce” prior to the Effective Date, as such Covered Products are expressly
4 subject to the releases provided in this Consent Judgment. For purposes of this Consent
5 Judgment, the term “enter the stream of commerce” means that manufactured Covered
6 Products are put into final packaging for consumer sale and (1) have been Distributed into the
7 State of California or sold in the State of California by Fit Foods or (2) are no longer in the
8 possession of or under the control of Fit Foods.

9 **4. SETTLEMENT PAYMENT**

10 **4.1** In full satisfaction of all potential civil penalties, additional settlement
11 payments, attorney’s fees, and costs, Fit Foods shall make a total payment of \$80,000.00
12 (“Total Settlement Amount”) to ERC within 10 days of the Effective Date (“Due Date”). Fit
13 Foods shall make this payment by wire transfer to ERC’s account, for which ERC will give Fit
14 Foods the necessary account information. The Total Settlement Amount shall be apportioned
15 as follows:

16 **4.2** \$8,000.00 shall be considered a civil penalty pursuant to California Health and
17 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,000.00) of the civil penalty to the
18 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
19 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
20 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,000.00) of the civil penalty.

21 **4.3** \$9,842.11 shall be distributed to ERC as reimbursement to ERC for reasonable
22 costs incurred in bringing this action.

23 **4.4** \$27,864.00 shall be distributed to Michael Freund as reimbursement of ERC’s
24 attorney’s fees, while \$34,293.89 shall be distributed to ERC for its in-house legal fees.
25 Except as explicitly provided herein, each Party shall bear its own fees and costs.

26 **4.5** In the event that Fit Foods fails to remit the Total Settlement Amount owed
27 under Section 4 of this Consent Judgment on or before the Due Date, Fit Foods shall be
28 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall

1 provide written notice of the delinquency to Fit Foods via electronic mail. If Fit Foods fails to
2 deliver the Total Settlement Amount within five (5) days from the written notice, the Total
3 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the
4 California Code of Civil Procedure section 685.010. Additionally, Fit Foods agrees to pay
5 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under
6 this Consent Judgment.

7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
9 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
10 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
11 modified consent judgment.

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

24 **5.3** In the event that Fit Foods initiates or otherwise requests a modification under
25 Section 5.1 for its primary benefit, and the meet and confer process leads to a joint motion or
26 application for a modification of the Consent Judgment, Fit Foods shall reimburse ERC its
27 costs and reasonable attorney's fees for the time spent in the meet-and-confer process and
28 filing and arguing the motion or application, such costs and fees not to exceed \$10,000.

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

13 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

28 **8.2** ERC, acting in the public interest, releases the Released Parties from any

1 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
2 to lead and/or cadmium and/or mercury from the Covered Products as set forth in the Notices
3 of Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released
4 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
5 penalties, fees, costs, and expenses asserted, or that could have been asserted from the
6 handling, use, or consumption of the Covered Products, as to any alleged violation of
7 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
8 65 warnings on the Covered Products regarding lead and/or cadmium and/or mercury up to and
9 including the Effective Date.

10 **8.3** ERC on its own behalf only, and Fit Foods on its own behalf only, further
11 waive and release any and all claims they may have against each other for all actions or
12 statements made or undertaken in the course of seeking or opposing enforcement of
13 Proposition 65 in connection with the Notices and Complaint up to and including the Effective
14 Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek
15 to enforce the terms of this Consent Judgment.

16 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
17 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
18 discovered. ERC on behalf of itself only, and Fit Foods on behalf of itself only, acknowledge
19 that this Consent Judgment is expressly intended to cover and include all such claims up to and
20 including the Effective Date, including all rights of action therefore. ERC and Fit Foods
21 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown
22 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
23 claims. California Civil Code section 1542 reads as follows:

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

ERC on behalf of itself only, and Fit Foods on behalf of itself only, acknowledge and

1 understand the significance and consequences of this specific waiver of California Civil Code
2 section 1542.

3 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
4 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
5 exposures to lead and/or cadmium and/or mercury in the Covered Products as set forth in the
6 Notices and Complaint.

7 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any of Fit Foods'
9 products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

14 **10. GOVERNING LAW**

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

17 **11. PROVISION OF NOTICE**

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

21 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
22 Chris Heptinstall, Executive Director, Environmental Research Center
23 3111 Camino Del Rio North, Suite 400
24 San Diego, CA 92108
25 Ph: (619) 500-3090
26 Email: chris.heptinstall@erc501c3.org

27 With a copy to:
28 Michael Freund
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Email: freund1@aol.com

1 **FOR FIT FOODS LTD.**

2 Jim McMahon, CEO, Fit Foods, Ltd.
3 1589 Kebet Way
4 Port Coquitlam, BC
5 Canada V3C 6L6
6 Email: jim@fitfoods.ca

7 With a copy to:
8 Deepi Miller
9 Greenberg Traurig LLP
10 1201 K St, Ste 1100
11 Sacramento, CA 95814
12 Telephone: (916) 442-1111
13 Email: millerde@gtlaw.com

14 **12. COURT APPROVAL**

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

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

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

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

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

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

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

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

9 **16. ENFORCEMENT**

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

18 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

25 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

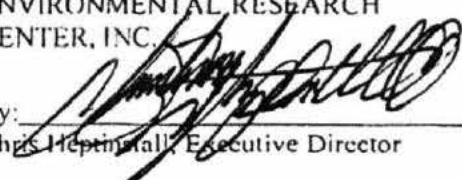
This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

(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

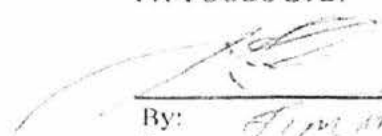
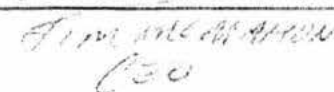
(2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: 7/21, 2022

ENVIRONMENTAL RESEARCH CENTER, INC.
By: 
Chris Heptinstall, Executive Director

Dated: July 20, 2022

FIT FOODS LTD.
By: 
Its: 

1 **APPROVED AS TO FORM:**

2 Dated: 7/21/, 2022


MICHAEL FREUND & ASSOCIATES

3 By: 

4 Michael Freund
5 Attorney for Environmental Research
6 Center, Inc.

7 Dated: July 21, 2022

GREENBERG TRAUERIG LLP

8 By: 

9 Deepi Miller
10 Attorney for Defendant Fit Foods Ltd.

11 **ORDER AND JUDGMENT**

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

14 IT IS SO ORDERED, ADJUDGED AND DECREED.

15 Dated: UJ dG, 2022

16 

17 Judge of the Superior Court
18 **Tara Desautels / Judge**

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EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

January 13, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Fit Foods Ltd.

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. North Coast Naturals Plant-Based Essentials Complete Vege Pro-7 Chocolate - Lead
2. North Coast Naturals Plant-Based Essentials Complete Vege Pro-7 Vanilla - Lead
3. Mutant Dark Series Mass XXXtreme 2500 Cookies & Cream Flavor - Lead
4. Mutant Dark Series Mass Extreme 2500 Vanilla Ice Cream Flavor - Lead
5. Mutant Dark Series Mass Extreme 2500 Triple Chocolate Flavor - Lead, Cadmium
6. North Coast Naturals Plant-Based Essentials Ultimate Daily Greens Mixed Berry & Citrus - Lead
7. North Coast Naturals Plant-Based Essentials Ultimate Daily Cleanse Unflavored - Lead
8. North Coast Naturals Plant-Based Essentials Boosted Plant Protein Vanilla - Lead
9. North Coast Naturals Plant-Based Essentials Boosted Vegan All-In-One Vanilla - Lead

10. North Coast Naturals Plant-Based Essentials Cold Pressed Pumpkin Protein Pumpkin Spice - Lead

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 13, 2018, 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.

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

January 13, 2021

Page 3

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fit Foods Ltd.)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Fit Foods Ltd.

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: January 13, 2021



Michael Freund

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 January 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Fit Foods Ltd.
1589 Kebet Way
Port Coquitlam, BC V3C 6L5
Canada

Current President or CEO
Fit Foods Ltd.
101-1551 Broadway St.
Port Coquitlam, BC V3C 6N9
Canada

On January 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

January 13, 2021

Page 6

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

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
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

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcda.org

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

Alethea Sargent, Assistant District Attorney
White Collar Division
San Francisco District Attorney's Office
350 Rhode Island Street
North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

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

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

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

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

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

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

January 13, 2021

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On January 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 13, 2021, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

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 4th 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 Bernadino, CA 92415

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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EXHIBIT B

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

March 4, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Fit Foods Ltd.

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. North Coast Naturals Organic Sprouted Raw Brown Rice Protein Unflavoured - Lead
 2. Whey Gourmet High Protein Shake Chocolate - Lead
 3. PVL Pure Vita Labs Full Potency DAA+ Unflavoured - Lead
 4. North Coast Naturals Boosted Iso Protein 100 Whey Protein Isolate Chocolate - Lead
 5. North Coast Naturals Cold Pressed Pumpkin Protein Pumpkin Seed Protein Unflavored - Lead
 6. North Coast Naturals Boosted Vegan All-In-One Nutritious Whole-Food Shake Chocolate - Lead
 7. North Coast Naturals Boosted Plant Protein Fermented & Sprouted Performance Protein Chocolate - Lead
-

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 4, 2018, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fit Foods Ltd.)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Fit Foods Ltd.

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: March 4, 2021



Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On March 4, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Fit Foods Ltd.
1589 Kebet Way
Port Coquitlam, BC V3C 6L5
Canada

Current President or CEO
Fit Foods Ltd.
101-1551 Broadway St.
Port Coquitlam, BC V3C 6N9
Canada

On March 4, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On March 4, 2021 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 550
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

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

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

March 4, 2021

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

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

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

Clifford H. Newell, District Attorney
Nevada County
201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Morgan Briggs Gire, District Attorney
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Roseville, CA 95678
Prop65@placer.ca.gov

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Quincy, CA 95971
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Anne Marie Schubert, District Attorney
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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San Diego, CA 92101
SanDiegoDAProp65@sdcda.org

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

Alethea Sargent, Assistant District Attorney
White Collar Division
San Francisco District Attorney's Office
350 Rhode Island Street
North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatt.org

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

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

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

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

March 4, 2021

Page 6

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

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

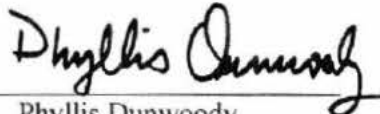
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

On March 4, 2021 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on March 4, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 4, 2021

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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 4th 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, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

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, Orange
County
300 N Flower St
Santa Ana, CA 92703

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

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

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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EXHIBIT C

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

July 16, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Fit Foods Ltd.

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. **North Coast Naturals Boosted Iso Protein 100 Whey Protein Isolate Chocolate – Mercury**
2. **North Coast Naturals Boosted Vegan All-In-One Nutritious Whole-Food Shake Chocolate – Mercury, Cadmium**

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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 July 16, 2018, 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.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fit Foods Ltd.)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Fit Foods Ltd.

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: July 16, 2021

Michael Freund

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 July 16, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified 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"** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below, through its attorney pursuant to agreement:

Fit Foods Ltd.
c/o Willis M. Wagner
Greenberg Traurig, LLP
1201 K St, Ste 1100
Sacramento, CA 95814
Email: wagnerw@gtlaw.com

On July 16, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 16, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

July 16, 2021

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Mariposa, CA 95338
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SanDiegoDAProp65@sdca.org

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

Alethea Sargent, Assistant District Attorney
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San Francisco District Attorney's Office
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North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

Valerie Lopez, Deputy City Attorney
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Tori Verber Salazar, District Attorney
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edobroth@co.slo.ca.us

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DAProp65@co.santa-barbara.ca.us

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San Jose, CA 95110
EPU@da.sccgov.org

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

July 16, 2021

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Gregory D. Totten, District Attorney
Ventura County
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Ventura, CA 93009
daspecialops@ventura.org

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

On July 16, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on July 16, 2021, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

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 4th 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, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

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, Orange
County
300 N Flower St
Santa Ana, CA 92703

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

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

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
PO Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.