

1 Charles W. Poss (SBN 325366)
2 Environmental Research Center, Inc.
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Email: charles.poss@erc501c3.org
7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 Peg Carew Toledo (SBN 181227)
10 Arnold & Porter Kaye Scholer LLP
11 Three Embarcadero Center, 10th Floor
12 San Francisco, CA 94111
13 Telephone: (415) 471-3110
14 Email: peg.toledo@arnoldporter.com
15 Attorney for Defendant
16 TRIBAL NUTRITION LLC

FILED
Superior Court of California
County of Alameda
05/19/2022
Clad Flake, Executive Officer / Clerk of the Court
By: A. Ampornah Deputy
A. Ampornah

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

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

18 **Plaintiff,**

19 **vs.**

20 **TRIBAL NUTRITION LLC, individually**
21 **and dba KA'CHAVA; and DOES 1-100,**

22 **Defendants.**

CASE NO. 21CV003979

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 13, 2021

Trial Date: None set

23
24 **1. INTRODUCTION**

25 **1.1** On December 13, 2021, Plaintiff Environmental Research Center, Inc. (“ERC”),
26 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
27 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
28 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Tribal Nutrition LLC (“Tribal Nutrition”), individually and dba
2 Ka’Chava and Does 1-100. In this action, ERC alleges that a number of products
3 manufactured, distributed, or sold by Tribal Nutrition contain lead, a chemical listed under
4 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical
5 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Ka'Chava
7 Tribal Superfood The Whole Body Meal Vanilla and (2) Ka'Chava Tribal Superfood The
8 Whole Body Meal Chocolate.

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

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

15 **1.4** ERC alleges that Tribal Nutrition is a business entity that has employed ten or
16 more persons at all times relevant to this action, and qualifies as a “person in the course of doing
17 business” within the meaning of Proposition 65. Tribal Nutrition manufactures, distributes, and/or
18 sells the Covered Products. Tribal Nutrition disputes this allegation.

19 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
20 dated June 24, 2021 that was served on the California Attorney General, other public enforcers,
21 and Tribal Nutrition (“Notice”). A true and correct copy of the 60-Day Notice dated June 24,
22 2021 is attached hereto as *Exhibit A* and incorporated herein by reference. More than 60 days
23 have passed since the Notice was served on the Attorney General, public enforcers, and Tribal
24 Nutrition and no designated governmental entity has filed a Complaint against Tribal Nutrition
25 with regard to the Covered Products or the alleged violations.

26 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products by
27 California consumers exposes them to lead without first receiving clear and reasonable
28 warnings from Tribal Nutrition, which is in violation of California Health and Safety Code

1 section 25249.6. Tribal Nutrition denies all material allegations contained in the Notice and
2 Complaint.

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

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

13 **1.9** The Effective Date of this Consent Judgment is the date on which ERC serves
14 the Notice of Entry of the Consent Judgment.

15 **2. JURISDICTION AND VENUE**

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

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

24 **3.1** Beginning on the Effective Date, Tribal Nutrition shall be permanently enjoined
25 from manufacturing for sale in the State of California, “Distributing into the State of
26 California,” or directly selling in the State of California, any Covered Product that exposes a
27 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it
28 meets the warning requirements under Section 3.2.

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

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

12 **3.2 Clear and Reasonable Warnings**

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

15 **OPTION 1**

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

19 Tribal Nutrition shall use the phrase “cancer and” in the Warning if Tribal Nutrition has
20 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
21 determined pursuant to the testing methodology set forth in Section 3.4 or if another
22 Proposition 65 chemical is present which may require a cancer warning.

23 **OPTION 2**

24 Tribal Nutrition may elect to use the following short-form Warning:

25 **⚠ WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov

26 For Option 2, the entire Warning must be in a type size no smaller than the largest type
27 size used for other consumer information on the product. “Consumer information” includes
28 warnings, directions for use, ingredient lists, and nutritional information. “Consumer

1 information” does not include the brand name, product name, company name, location of
2 manufacture, or product advertising. In no case shall the Warning appear in a type size smaller
3 than six (6) point type. In addition for Option 2, a symbol consisting of a black exclamation
4 point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the
5 text of the Warning, in a size no smaller than the height of the word “WARNING.” Where the
6 label for the product is not printed using the color yellow, the symbol may be in black and
7 white.

8 **3.2.1 Internet Sales.** For any Covered Product sold over the internet, the Warning
9 shall be prominently displayed as follows: (a) on the primary display page for the Covered
10 Product; (b) as a clearly marked hyperlink using the word “WARNING” in all capital and bold
11 letters on the Covered Product’s primary display page; so long as the hyperlink goes directly to
12 a page prominently displaying the Warning without content that detracts from the Warning; (c)
13 on the checkout page or any other page in the checkout process when a California delivery
14 address is indicated for any purchase of any Covered Product and with the Warning clearly
15 associated with the Covered Product to indicate that the product is subject to the Warning; or
16 (d) by otherwise prominently displaying the Warning to the purchaser prior to completing the
17 purchase. The Warning is not prominently displayed if the purchaser must search for it in the
18 general content of the website.

19 **3.2.2 Warning Prominence.** The Warning shall be at least the same size as the
20 largest of any other health or safety warnings also appearing on the website or on the label and
21 the word “WARNING” shall be in all capital letters and in bold print. Tribal Nutrition must
22 display the Warning with such conspicuousness, as compared with other words, statements or
23 designs on the label, or on its website, if applicable, to render the Warning likely to be read and
24 understood by an ordinary individual under customary conditions of purchase or use of the
25 product. The Warning may be accompanied by supplemental information only to the extent that
26 the supplemental information identifies the source of the exposure or provides information on
27 how to avoid or reduce exposure to the identified chemical or chemicals. For purposes of this
28 Consent Judgment, the term “label” means a display of written, printed or graphic material that is

1 printed on or affixed to a Covered Product or its immediate container or wrapper.

2 **3.2.3 Alternative Warning Content and Methods.** The Parties acknowledge that the
3 Option 1 Warning is the Safe Harbor Warning Language for foods and dietary supplements
4 currently set forth in Title 27, California Code of Regulations, section 25607.2. In the event that
5 the warning language in section 25607.2 is amended or modified in the future, Tribal Nutrition
6 may use the safe harbor warning language in section 25607.2 as amended or modified so long as it
7 remains applicable to the Covered Products.

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 as determined by the the exposure
11 methodology set forth in Section 3.1.2 and the testing methodology described in Section 3.4.

12 **3.4 Testing Methodology**

13 **3.4.1** Beginning within one year of the Effective Date, Tribal Nutrition shall
14 arrange for lead testing of the Covered Products at least once a year for a minimum of three (3)
15 consecutive years by arranging for testing of one (1) randomly selected sample of each of the
16 Covered Products, in the form intended for sale to the end-user, which Tribal Nutrition intends
17 to sell or is manufacturing for sale in California, directly selling to a consumer in California or
18 “Distributing into the State of California.” If tests conducted pursuant to this Section
19 demonstrate that no Warning is required for a Covered Product during each of three (3)
20 consecutive years, then the testing requirements of this Section will no longer be required as to
21 that Covered Product. However, if during or after the three-year testing period, Tribal Nutrition
22 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
23 Covered Products, Tribal Nutrition shall test that Covered Product annually for at least two (2)
24 consecutive years after such change is made.

25 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the lead
26 detection result of the one (1) randomly selected sample of the Covered Products will be
27 controlling.

28 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a

1 laboratory method that complies with the performance and quality control factors appropriate
2 for the method used, including limit of detection and limit of quantification, sensitivity,
3 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
4 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
5 mg/kg.

6 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
7 independent third party laboratory certified by the California Environmental Laboratory
8 Accreditation Program or an independent third-party laboratory that is registered with the
9 United States Food & Drug Administration.

10 **3.4.5** Nothing in this Consent Judgment shall limit Tribal Nutrition’s ability to
11 conduct, or require that others conduct, additional testing of the Covered Products, including
12 the raw materials used in their manufacture.

13 **3.4.6** Within thirty (30) days of ERC’s written request, Tribal Nutrition shall
14 deliver lab reports obtained pursuant to Section 3.4 to ERC. Tribal Nutrition shall retain all test
15 results and documentation for a period of five (5) years from the date of each test.

16 **3.4.7** The testing requirements of this Section 3.4 do not apply to any Covered
17 Product for which Tribal Nutrition has provided a Warning in compliance with Section 3.2
18 continuously and uninterrupted after the Effective Date; however, in the event Tribal Nutrition
19 ceases to provide the Warning in compliance with Section 3.2, Tribal Nutrition shall be
20 required to comply with the testing requirements of this Section beginning immediately after
21 the date the Warning ceases to be provided or one year after the Effective Date, whichever date
22 is later, unless Tribal Nutrition can show to the satisfaction of ERC that the cessation in
23 providing the Warning was a temporary error that was resolved when discovered.

24 **4. SETTLEMENT PAYMENT**

25 **4.1** In full satisfaction of all potential civil penalties, additional settlement
26 payments, attorney’s fees, and costs, Tribal Nutrition shall make a total payment of
27 \$295,000.00 (“Total Settlement Amount”) to ERC within five (5) business days of the
28 Effective Date (“Due Date”). Tribal Nutrition shall make this payment by wire transfer to

1 ERC's account, for which ERC will give Tribal Nutrition the necessary account information.

2 The Total Settlement Amount shall be apportioned as follows:

3 **4.2** \$161,000.00 shall be considered a civil penalty pursuant to California Health
4 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$120,750.00) of the civil
5 penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in
6 the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health
7 and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$40,250.00) of the
8 civil penalty.

9 **4.3** \$3,565.10 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 **4.4** \$120,561.19 shall be distributed to ERC as an Additional Settlement Payment
12 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
13 and 3204. ERC will utilize the ASP for activities that address the same public harm as
14 allegedly caused by Defendant in this matter. These activities are detailed
15 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
16 chemicals in dietary supplement products in California. ERC's activities have had, and will
17 continue to have, a direct and primary effect within the State of California because California
18 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
19 supplements and/or by providing clear and reasonable warnings to California consumers prior
20 to ingestion of the products.

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

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

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

18 **4.5** \$9,873.71 shall be distributed to ERC for its in-house legal fees. Except as
19 explicitly provided herein, each Party shall bear its own fees and costs.

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

1
2 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

24 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
25 **JUDGMENT**

26 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
27 terminate this Consent Judgment.

28 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming

1 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
2 inform Tribal Nutrition in a reasonably prompt manner of its test results, including information
3 sufficient to permit Tribal Nutrition to identify the Covered Products at issue. Tribal Nutrition
4 shall, within thirty (30) days following such notice, provide ERC with testing information,
5 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and
6 3.4.4, demonstrating Tribal Nutrition’s compliance with the Consent Judgment. The Parties
7 shall first attempt to resolve the matter prior to ERC taking any further legal action.

8 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
17 on behalf of itself and in the public interest, and Tribal Nutrition and its respective officers,
18 directors, shareholders, members, employees, agents, parent companies, subsidiaries, divisions,
19 suppliers, franchisees, licensees, customers (not including private label customers of Tribal
20 Nutrition), distributors, wholesalers, retailers, and all other upstream and downstream entities
21 in the distribution chain of any Covered Product, and the predecessors, successors, and assigns
22 of any of them (collectively, “Released Parties”).

23 **8.2** ERC, acting in the public interest, releases the Released Parties from any
24 and all claims for violations of Proposition 65 up to and including the Effective Date based on
25 exposure to lead from the Covered Products as set forth in the Notice and Complaint. ERC, on
26 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
27 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
28 expenses asserted, or that could have been asserted from the handling, use, or consumption of

1 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
2 regulations arising from the failure to provide Proposition 65 warnings on the Covered
3 Products regarding lead up to and including the Effective Date.

4 **8.3** ERC on its own behalf only, and Tribal Nutrition on its own behalf only,
5 further waive and release any and all claims they may have against each other for all actions or
6 statements made or undertaken in the course of seeking or opposing enforcement of
7 Proposition 65 in connection with the Notice and Complaint up through and including the
8 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
9 right to seek to enforce the terms of this Consent Judgment.

10 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC on behalf of itself only, and Tribal Nutrition on behalf of itself only,
13 acknowledge that this Consent Judgment is expressly intended to cover and include all such
14 claims up through and including the Effective Date, including all rights of action therefore.
15 ERC and Tribal Nutrition acknowledge that the claims released in Sections 8.2 and 8.3 above
16 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
17 any such unknown claims. California Civil Code section 1542 reads as follows:

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

22 ERC on behalf of itself only, and Tribal Nutrition on behalf of itself only, acknowledge and
23 understand the significance and consequences of this specific waiver of California Civil Code
24 section 1542.

25 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
26 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
27 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

28 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or

1 environmental exposures arising under Proposition 65, nor shall it apply to any of Tribal
2 Nutrition's products other than the Covered Products.

3 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

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

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

15 Chris Heptinstall, Executive Director, Environmental Research Center
16 3111 Camino Del Rio North, Suite 400
17 San Diego, CA 92108
18 Ph: (619) 500-3090
19 Email: chris.heptinstall@erc501c3.org

19 With a copy to:
20 Charles W. Poss Environmental Research Center, Inc.
21 3111 Camino Del Rio North, Suite 400
22 San Diego, CA 92108
23 Ph: (619) 500-3090
24 Email: charles.poss@erc501c3.org

23 **FOR TRIBAL NUTRITION LLC:**

24 Michael Hanley, Chief Financial Officer
25 Tribal Nutrition LLC
26 11500 South Eastern Avenue #150
27 Henderson, NV 89052

27 ///

28 ///

1 Peg Carew Toledo
2 Arnold & Porter Kaye Scholer LLP
3 Three Embarcadero Center, 10th Floor
4 San Francisco, CA 94111
5 Telephone: (415) 471-3110
6 Email: peg.toledo@arnoldporter.com

7 **12. COURT APPROVAL**

8 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
9 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
10 Consent Judgment.

11 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
12 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
13 prior to the hearing on the motion.

14 **12.3** If this Consent Judgment is not approved by the Court, it shall be void and have
15 no force or effect.

16 **13. EXECUTION AND COUNTERPARTS**

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

20 **14. DRAFTING**

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

///

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

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

6 **16. ENFORCEMENT**

7 The Parties may, by motion or order to show cause before the Superior Court of
8 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any
9 action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
10 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment
11 and Proposition 65.

12 **17. ENTIRE AGREEMENT, AUTHORIZATION**

13 **17.1** This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter herein, including any and
15 all prior discussions, negotiations, commitments, and understandings related thereto. No
16 representations, oral or otherwise, express or implied, other than those contained herein have
17 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
18 herein, shall be deemed to exist or to bind any Party.

19 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
20 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

23 This Consent Judgment has come before the Court upon the request of the Parties. The
24 Parties request the Court to fully review this Consent Judgment and, being fully informed
25 regarding the matters which are the subject of this action make the findings pursuant to California
26 Health and Safety Code section 25249.7(f)(4) and approve this Consent Judgment.

27 ///

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1 **IT IS SO STIPULATED:**

2 Dated: 2/4/, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
5 Chris Henthorn, Executive Director

6 Dated: February 4, 2022

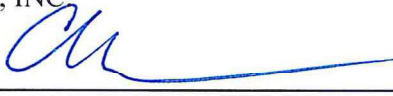
TRIBAL NUTRITION LLC

7 Michael Hanley
8 By: Michael Hanley
9 Its: Chief Financial Officer

10 **APPROVED AS TO FORM:**

11
12 Dated: February 9, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

13
14 By: 
15 Charles W. Poss
16 In-House Counsel

17 Dated: February 4, 2022

ARNOLD & PORTER KAYE SCHOLER
LLP

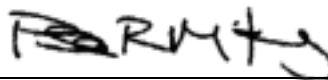
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19 By: Peg Carew Toledo
20 Peg Carew Toledo
21 Attorney For Tribal Nutrition LLC
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1 **ORDER AND JUDGMENT**

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5
6 Dated: _____ T æ ÅJ _____, 2022



7 Judge of the Superior Court

8 **Patrick McKinney / Judge**

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EXHIBIT A



Environmental Research Center

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

June 24, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Tribal Nutrition LLC, individually and dba Ka'Chava

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. Ka'Chava Tribal Superfood The Whole Body Meal Vanilla - Lead**
- 2. Ka'Chava Tribal Superfood The Whole Body Meal 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 June 24, 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.

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

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Tribal Nutrition LLC, individually and dba Ka'Chava and their Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Tribal Nutrition LLC, individually and dba Ka'Chava

I, Chris Heptinstall, declare:

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

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

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

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

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



Dated: June 24, 2021

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On June 24, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Tribal Nutrition LLC, individually and
dba Ka'Chava
11500 S Eastern Ave #150
Henderson, NV 89052

Current President or CEO
Tribal Nutrition LLC, individually and
dba Ka'Chava
PO Box 1874
Zephyr Cove, NV 89448

Current President or CEO
Tribal Nutrition LLC, individually and
dba Ka'Chava
PO Box 1203
Zephyr Cove, NV 89448

Wade Gribaldo
(Registered Agent for Tribal Nutrition LLC, individually
dba Ka'Chava)
279 Cheyenne Way
PO Box 1203
Zephyr Cove, NV 89448

On June 24, 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
Post Office Box 70550
Oakland, CA 94612-0550

On June 24, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

June 24, 2021

Page 5

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

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

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

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

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
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
Plumas County
520 Main St
Quincy, CA 95971
davidhollister@countyofplumas.com

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@sdca.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@sfcityatty.org

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

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

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

June 24, 2021

Page 6

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

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

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

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

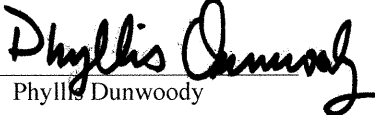
Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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 June 24, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on June 24, 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
Post Office 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.