

FILED
ALAMEDA COUNTY

SEP 14 2022

CLERK OF THE SUPERIOR COURT

By  Deputy

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

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

20 **Plaintiff,**

21 **vs.**

22 **APRICOT POWER, INC. and DOES 1-100**

23 **Defendants.**

CASE NO. 22CV008035

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 7, 2022

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On March 7, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a
26 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.*
 (“Proposition 65”), against Apricot Power, Inc. (“Apricot Power”) and Does 1-100. In this

1 action, ERC alleges that a number of products manufactured, distributed, or sold by Apricot
2 Power contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and
3 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
4 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
5 collectively as “Covered Products”) are: (1) Apricot Power Ground SuperFood Mix Chocolate
6 Brownie (lead, cadmium) and (2) Apricot Power Ground SuperFood Mix Coconut Almond
7 (lead).

8 **1.2** ERC and Apricot Power are hereinafter referred to individually as a “Party” or
9 collectively as the “Parties.”

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

14 **1.4** For purposes of this Consent Judgment, ERC contends that Apricot Power is a
15 business entity that has employed ten or more persons at all times relevant to this action, and
16 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
17 Apricot Power manufactures, distributes, and/or sells the Covered Products.

18 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
19 dated October 14, 2021 that was served on the California Attorney General, other public
20 enforcers, and Apricot Power (“Notice”). A true and correct copy of the 60-Day Notice dated
21 October 14, 2021 is attached hereto as *Exhibit A* and incorporated herein by reference. More
22 than 60 days have passed since the Notice was served on the Attorney General, public
23 enforcers, and Apricot Power and no designated governmental entity has filed a Complaint
24 against Apricot Power with regard to the Covered Products or the alleged violations.

25 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products by
26 California consumers exposes them to lead and/or cadmium without first receiving clear and
27 reasonable warnings from Apricot Power, which is in violation of California Health and Safety
28 Code section 25249.6. Apricot Power denies all material allegations contained in the Notice

1 and Complaint.

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

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

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

14 **2. JURISDICTION AND VENUE**

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

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

23 **3.1** Beginning on the Effective Date, Apricot Power shall be permanently enjoined
24 from manufacturing for sale in the State of California, “Distributing into the State of
25 California,” or directly selling in the State of California, any Covered Product that exposes a
26 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
27 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium 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 Apricot Power knows or has reason
4 to know will sell the Covered Product in California.

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

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

20 **3.2 Clear and Reasonable Warnings**

21 If Apricot Power is required to provide a warning pursuant to Section 3.1, the following
22 warning must be utilized (“Warning”):

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

26 Apricot Power shall use the phrase “cancer and” in the Warning if Apricot Power has
27 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
28 determined pursuant to the quality control methodology set forth in Section 3.4 or if Apricot

1 Power has reason to believe that another Proposition 65 chemical is present which may require a
2 cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there
3 is lead, cadmium, or both chemicals present in each of the Covered Products.

4 The Warning shall be securely affixed to or printed upon the label of each Covered
5 Product and it must be set off from other surrounding information and enclosed in a box. In
6 addition, for any Covered Product sold over the internet, the Warning shall appear on the
7 checkout page when a California delivery address is indicated for any purchase of any Covered
8 Product. An asterisk or other identifying method must be utilized to identify which products on
9 the checkout page are subject to the Warning. In no event shall any internet or website
10 Warning be contained in or made through a link.

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

17 Apricot Power must display the above Warning with such conspicuousness, as compared
18 with other words, statements or designs on the label, or on its website, if applicable, to render the
19 Warning likely to be read and understood by an ordinary individual under customary conditions
20 of purchase or use of the product.

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

24 **3.3 Conforming Covered Products**

25 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
26 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure
27 Level” is no more than 4.1 micrograms of cadmium per day as determined by the exposure
28 methodology set forth in Section 3.1.2 and the quality control methodology described in Section

1 3.4, and that is not known by Apricot Power to contain other chemicals that violate Proposition
2 65's safe harbor thresholds.

3 **3.4 Testing and Quality Control Methodology**

4 **3.4.1** Beginning within one year of the Effective Date, for any Covered
5 Product Apricot Power intends to sell or is manufacturing for sale in the state of California,
6 directly selling to a consumer in California or "Distributing into the State of California,"
7 Apricot Power shall arrange for lead and cadmium testing of the Covered Products at least
8 once a year for a minimum of five consecutive years by arranging for testing of three (3)
9 randomly selected samples of each of the Covered Products, in the form intended for sale to
10 the end-user, which Apricot Power intends to sell or is manufacturing for sale in California,
11 directly selling to a consumer in California or "Distributing into the State of California." If
12 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered
13 Product during each of five consecutive years, then the testing requirements of this Section will
14 no longer be required as to that Covered Product. However, if during or after the five-year
15 testing period, Apricot Power changes ingredient suppliers for any of the Covered Products
16 and/or reformulates any of the Covered Products, Apricot Power shall test that Covered
17 Product annually for at least four (4) consecutive years after such change is made.

18 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
19 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the
20 three (3) randomly selected samples of the Covered Products will be controlling.

21 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
22 laboratory method that complies with the performance and quality control factors appropriate
23 for the method used, including limit of detection and limit of quantification, sensitivity,
24 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
25 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005
26 mg/kg.

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

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

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

6 **3.4.6** Within thirty (30) days of ERC's written request, Apricot Power shall
7 deliver to ERC lab reports obtained pursuant to Section 3.4 or a written statement under
8 penalty of perjury stating: (1) that no Covered Products are being sold in the State of
9 California, such that no testing is required; (2) the date on which Apricot Power ceased selling
10 the Covered Products in the State of California; and (3) that Apricot Power agrees to comply
11 with the testing provisions of Section 3.4 immediately after sales of any of the Covered
12 Products resume in the State of California. Apricot Power shall retain all test results and
13 documentation for a period of five years from the date of each test.

14 **4. SETTLEMENT PAYMENT**

15 **4.1** In full satisfaction of all potential civil penalties, additional settlement
16 payments, attorney's fees, and costs, Apricot Power shall make a total payment of \$12,000.00
17 ("Total Settlement Amount") to ERC in two periodic payments (the "Periodic Payments")
18 according to the following payment schedule ("Due Dates"):

- 19 • Payment 1 -- \$6,000.00 within 5 days of the Effective Date
- 20 • Payment 2 --\$6,000.00 within 35 days of the Effective Date

21 Apricot Power shall make these Periodic Payments by wire transfer to ERC's account,
22 for which ERC will give Apricot Power the necessary account information. The Total
23 Settlement Amount shall be apportioned as follows:

24 **4.2** \$500.00 shall be considered a civil penalty pursuant to California Health and
25 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$375.00) of the civil penalty to the
26 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
28 Code section 25249.12(c). ERC will retain the remaining 25% (\$125.00) of the civil penalty.

1 **4.3** \$3,896.49 shall be distributed to ERC as reimbursement to ERC for reasonable
2 costs incurred in bringing this action.

3 **4.4** \$7,603.51 shall be distributed to ERC for its in-house legal fees. Except as
4 explicitly provided herein, each Party shall bear its own fees and costs.

5 **4.5** In the event that Apricot Power fails to remit the full Periodic Payments owed
6 under Section 4.1 of this Consent Judgment on or before the applicable Due Date, Apricot
7 Power shall be deemed to be in material breach of its obligations under this Consent Judgment.
8 ERC shall provide written notice of the delinquency to Apricot Power via electronic mail. If
9 Apricot Power fails to deliver the delinquent payment within five (5) days from the written
10 notice, the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1,
11 shall be immediately due and owing and shall accrue interest at the statutory judgment interest
12 rate provided in the California Code of Civil Procedure section 685.010. Additionally, Apricot
13 Power agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the
14 payment(s) due under this Consent Judgment.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
17 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
18 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
19 modified consent judgment.

20 **5.2** If Apricot Power seeks to modify this Consent Judgment under Section 5.1, then
21 Apricot Power must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
22 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
23 must provide written notice to Apricot Power within thirty (30) days of receiving the Notice of
24 Intent. If ERC notifies Apricot Power in a timely manner of ERC's intent to meet and confer,
25 then the Parties shall meet and confer in good faith as required in this Section. The Parties
26 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
27 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
28 modification, ERC shall provide to Apricot Power a written basis for its position. The Parties

1 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
2 remaining disputes. Should it become necessary, the Parties may agree in writing to different
3 deadlines for the meet-and-confer period.

4 **5.3** In the event that Apricot Power initiates or otherwise requests a modification
5 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
6 modification of the Consent Judgment, Apricot Power shall reimburse ERC its costs and
7 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
8 arguing the motion or application.

9 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
10 **JUDGMENT**

11 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
12 terminate this Consent Judgment.

13 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
14 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
15 inform Apricot Power in a reasonably prompt manner of its test results, including information
16 sufficient to permit Apricot Power to identify the Covered Products at issue. Apricot Power
17 shall, within thirty (30) days following such notice, provide ERC with testing information,
18 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and
19 3.4.4, demonstrating Apricot Power's compliance with the Consent Judgment. The Parties shall
20 first attempt to resolve the matter prior to ERC taking any further legal action.

21 **7. APPLICATION OF CONSENT JUDGMENT**

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

28 ///

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC
3 and its predecessors, successors, and assigns, on behalf of itself and in the public interest, and
4 Apricot Power and its respective officers, directors, shareholders, employees, agents, parent
5 companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including
6 private label customers of Apricot Power), distributors, wholesalers, retailers, and all other
7 upstream and downstream entities in the distribution chain of any Covered Product, and the
8 predecessors, successors, and assigns of any of them (collectively, “Released Party”).

9 **8.2** ERC, acting in the public interest, releases the Released Party from any and
10 all claims for violations of Proposition 65 up through the Effective Date based on exposure to
11 lead and/or cadmium from the Covered Products as set forth in the Notice of Violation. ERC,
12 on behalf of itself only, hereby fully releases and discharges the Released Party from any and
13 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs,
14 and expenses asserted, or that could have been asserted from the handling, use, or consumption
15 of the Covered Products, as to any alleged violation of Proposition 65 or its implementing
16 regulations arising from the failure to provide Proposition 65 warnings on the Covered
17 Products regarding lead and/or cadmium up to and including the Effective Date.

18 **8.3** ERC on its own behalf only, and Apricot Power on its own behalf only,
19 further waive and release any and all claims they may have against each other for all actions or
20 statements made or undertaken in the course of seeking or opposing enforcement of
21 Proposition 65 in connection with the Notice and Complaint up through and including the
22 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s
23 right to seek to enforce the terms of this Consent Judgment.

24 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
25 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
26 discovered. ERC on behalf of itself only, and Apricot Power on behalf of itself only,
27 acknowledge that this Consent Judgment is expressly intended to cover and include all such
28 claims up through and including the Effective Date, including all rights of action therefore.

1 ERC and Apricot Power acknowledge that the claims released in Sections 8.2 and 8.3 above
2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
3 any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

11 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any of the Released Party regarding alleged
13 exposures to lead and/or cadmium in the Covered Products as set forth in the Notice and
14 Complaint.

15 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
16 environmental exposures arising under Proposition 65, nor shall it apply to any of Apricot
17 Power's products other than the Covered Products.

18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

22 **10. GOVERNING LAW**

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

25 **11. PROVISION OF NOTICE**

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

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

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

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

14 **APRICOT POWER, INC.**

15 Charles Richardson, Owner & CEO
16 Apricot Power, Inc.
17 13501 Ranch Road 12, Suite 103
18 Wimberley, TX 78676
19 Ph: (707)262-1394
20 Email: charley@apricotpower.com

21 With a copy to:
22 Kathryn L. Greene
23 Rodarakis & Sousa, APC
24 100 Sycamore Avenue, Ste 101
25 Modesto, CA 95354
26 Ph: (209) 554-5232
27 Email: kgreene@rodsoulaw.com

28 **12. COURT APPROVAL**

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

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

12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be

1 void and have no force or effect.

2 **13. EXECUTION AND COUNTERPARTS**

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

6 **14. DRAFTING**

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

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

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

20 **16. ENFORCEMENT**

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

1 17. ENTIRE AGREEMENT, AUTHORIZATION

2 17.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, including any and
4 all prior discussions, negotiations, commitments, and understandings related thereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

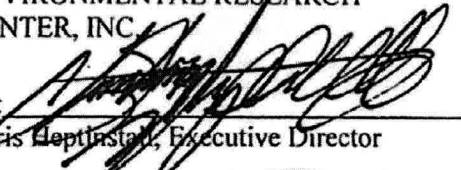
12 This Consent Judgment has come before the Court upon the request of the Parties. The
13 Parties request the Court to fully review this Consent Judgment and, being fully informed
14 regarding the matters which are the subject of this action, to:

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


18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 IT IS SO STIPULATED:

21 Dated: 5/13/, 2022

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

25
26 Dated: 5/16/, 2022


27 APRICOT POWER, INC.
28 By: 
Charles Richardson, Owner & CEO

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APPROVED AS TO FORM:

Dated: May 13, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Charles W. Poss
In-House Counsel

Dated: _____, 2022

RODARAKIS & SOUSA, APC

By: _____
Kathryn L. Greene
Attorney for Defendant Apricot Power,
Inc.

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2022

Judge of the Superior Court

1 **APPROVED AS TO FORM:**

2
3 Dated: May 13, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: _____
Charles W. Poss
6 In-House Counsel

7
8 Dated: May 16, 2022

RODARAKIS & SOUSA, APC

9
10 By: Kathryn L. Greene
11 Kathryn L. Greene
12 Attorney for Defendant Apricot Power,
13 Inc.

14
15
16 **ORDER AND JUDGMENT**

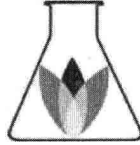
17 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
18 approved and Judgment is hereby entered according to its terms.

19 IT IS SO ORDERED, ADJUDGED AND DECREED.

20
21 Dated: SEP 14 2022, 2022

22 [Signature]
23 Judge of the Superior Court

EXHIBIT A



Environmental Research Center

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

October 14, 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:

Apricot Power, Inc.

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

- 1. Apricot Power Ground SuperFood Mix Chocolate Brownie – Lead, Cadmium**
- 2. Apricot Power Ground SuperFood Mix Coconut Almond - Lead**

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

October 14, 2021

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 14, 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.

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 Apricot Power, Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

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

I, Chris Heptinstall, declare:

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

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

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

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

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



Dated: October 14, 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 October 14, 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
Apricot Power, Inc.
13501 Ranch Rd 12, Ste 103
Wimberly, TX 78676

Current President or CEO
Apricot Power, Inc.
PO Box 745
Lakeport, CA 95453

Current President or CEO
Apricot Power, Inc.
9595 Ranch Rd 12, Ste 4
Wimberly, TX 78676

Corporation Service Company
Which Will Do Business in California
As CSC-Lawyers Incorporating Service
(Registered Agent for Apricot Power, Inc.)
2710 Gateway Oaks Dr, Ste 150N
Sacramento, CA 95833

Current President or CEO
Apricot Power, Inc.
501 South Main St
Lakeport, CA 95453

Corporation Service Company
(Registered Agent for Apricot Power, Inc.)
112 North Curry St
Carson City, NV 89703

Current President or CEO
Apricot Power, Inc.
720 S Main St
Lakeport, Ca 95453

Corporation Service Company dba CSC-Lawyers
Incorporating Service
(Registered Agent for Apricot Power, Inc.)
211 E 7th St, Ste 620
Austin, TX 78701

On October 14, 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 October 14, 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:

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

October 14, 2021

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

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

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Martinez, CA 94553
sgrassini@contracostada.org

Thomas L. Hardy, District Attorney
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Independence, CA 93526
inyoda@inyocounty.us

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

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

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550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

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

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1127 First Street, Ste C
Napa, CA 94559
CEPD@countyofnapa.org

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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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520 Main St
Quincy, CA 95971
davidhollister@countyofplumas.com

Paul E. Zellerbach, District Attorney
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Riverside, CA 92501
Prop65@rivcoda.org

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Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
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330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcca.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

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

October 14, 2021

Page 6

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

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Prop65DA@santacruzcounty.us

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DAConsumer.Environmental@sjcda.org

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Sonoma, CA 95403
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Prop65@co.tulare.ca.us

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

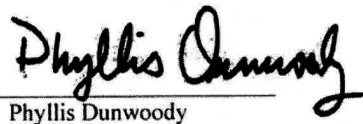
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On October 14, 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 October 14, 2021, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

October 14, 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
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.