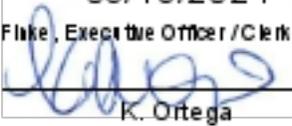


1 Charles W. Poss (SBN 325366)
2 Environmental Research Center, Inc.
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Email: charles.poss@erc501c3.org
7 Attorney for Plaintiff Environmental Research Center, Inc.

8 Robert T. Petraglia (SBN 264849)
9 BraunHagey & Borden LLP
10 351 California St, Fl 10
11 San Francisco, CA 94104
12 Ph: (415) 599-0210
13 Email: petraglia@braunhagey.com

14 Attorney for Defendant Simple Health LLC, individually and dba
15 Tosi and Tosi Snacks, S.P.C.

FILED
Superior Court of California
County of Alameda
03/19/2024
Clad File, Except the Officer / Clerk of the Court
By:  Deputy
K. Ortega

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

**SIMPLE HEALTH LLC, individually and
dba TOSI; TOSI SNACKS, S.P.C.; and
DOES 1-100**

Defendants.

CASE NO. 22CV010667

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 29, 2022

Trial Date: None set

1. INTRODUCTION

1.1 On April 29, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

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1 (“Proposition 65”), against Simple Health LLC, individually and dba Tosi and Does 1-100.
2 Subsequently, on May 5, 2022, a First Amended Complaint was filed adding Defendant Tosi
3 Snacks, S.P.C. Simple Health LLC and Tosi Snacks, S.P.C. are hereinafter collectively
4 referred to as “Tosi” or “Defendants”. On November 9, 2023, pursuant to an Order from the
5 Court, ERC filed its Second Amended Complaint (the operative Complaint hereinafter referred
6 to as “Complaint”) against Tosi. In this action, ERC alleges that a product manufactured,
7 distributed, or sold by Tosi contains lead, a chemical listed under Proposition 65 as a
8 carcinogen and reproductive toxin, and exposes consumers to this chemical at a level requiring
9 a Proposition 65 warning. This product (referred to hereinafter as the “Covered Product”) is:
10 Tosi Super Pops Puffed Ancient Grains Snack Cinnamon Apple.

11 **1.2** ERC and Tosi are hereinafter referred to individually as a “Party” or
12 collectively as the “Parties.”

13 **1.3** For the purposes of this Consent Judgment, the Parties agree that ERC is a 501
14 (c)(3) California non-profit corporation.

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

19 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
20 dated February 3, 2022 that was served on the California Attorney General, other public
21 enforcers, and Tosi (“Notice”). A true and correct copy of the 60-Day Notice dated February 3,
22 2022 is attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60
23 days have passed since the Notice was served on the Attorney General, public enforcers, and
24 Tosi and no designated governmental entity has filed a Complaint against Tosi with regard to
25 the Covered Product or the alleged violations.

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

1 25249.6. Tosi denies all material allegations contained in the Notice 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** In an effort to avoid incurring litigation costs, Tosi placed a warning on the
10 packaging of the Covered Product stating: WARNING: This product can expose you to trace
11 amounts of lead, a chemical known in the state of California to cause birth defects or other
12 reproductive harm. For more info visit tosi.com/PROP65.

13 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
15 any current or future legal proceeding unrelated to these proceedings.

16 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
17 as a Judgment by this Court.

18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning on the Effective Date, Tosi shall be permanently enjoined from
28 manufacturing for sale in the State of California, “Distributing into the State of California,” or

1 directly selling in the State of California, any Covered Product that exposes a person to a
2 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the
3 warning requirements under Section 3.2.

4 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
5 of California” shall mean to directly ship a Covered Product into California for sale in
6 California or to sell a Covered Product to a distributor that Tosi knows or has reason to know
7 will sell the Covered Product in California.

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

15 **3.2 Clear and Reasonable Warnings**

16 Tosi may continue to sell the Covered Product with the warning language that currently
17 appears on the packaging for a period of five months after the Effective Date. After those five
18 months have expired, if Tosi is required to provide a warning pursuant to Section 3.1, one of the
19 following warnings must be utilized (“Warning”):

20 **OPTION 1:**

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

24 or

25 **OPTION 2:**

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

27 Tosi shall use the phrase “cancer and” in the Warning if Tosi has reason to believe that the
28 “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the

1 quality control methodology set forth in Section 3.4 or if Tosi has reason to believe that another
2 Proposition 65 chemical is present which may require a cancer warning. For the Option 2
3 Warning, the entire Warning must be in a type size no smaller than the largest type size used for
4 other consumer information on the product. In no case shall the Warning appear in a type size
5 smaller than 6-point type. Further, for Option 2, a symbol consisting of a black exclamation point
6 in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of
7 the Warning, in a size no smaller than the height of the word “**WARNING.**” Where the sign,
8 label or shelf tag for the product is not printed using the color yellow, the symbol may be printed
9 in black and white.

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

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

23 Tosi must display the above Warning with such conspicuousness, as compared with other
24 words, statements or designs on the label, or on its website, if applicable, to render the Warning
25 likely to be read and understood by an ordinary individual under customary conditions of
26 purchase or use of the product. Where a sign or label used to provide the Warning for a Covered
27 Product includes consumer information about the Covered Product in a language other than
28 English, the Warning must also be provided in that language in addition to English.

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

4 **3.3 Conforming Covered Products**

5 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
6 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure
7 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
8 3.4, and that is not known by Tosi to contain other chemicals that violate Proposition 65’s safe
9 harbor thresholds.

10 **3.4 Testing and Quality Control Methodology**

11 **3.4.1** Subject to Section 3.4.7, beginning within one year of the Effective Date,
12 Tosi shall arrange for lead testing of the Covered Product at least once a year for a minimum of five
13 consecutive years by arranging for testing of three (3) randomly selected samples of the Covered
14 Product, in the form intended for sale to the end-user, which Tosi intends to sell or is manufacturing
15 for sale in California, directly selling to a consumer in California or “Distributing into the State of
16 California.” If tests conducted pursuant to this Section demonstrate that no Warning is required for
17 the Covered Product during each of five consecutive years, then the testing requirements of this
18 Section will no longer be required as to that Covered Product. However, if during or after the five-
19 year testing period, Tosi changes ingredient suppliers for the Covered Product and/or reformulates
20 the Covered Product, Tosi shall test that Covered Product annually for at least four (4) consecutive
21 years after such change is made. Tosi shall not be obligated to test the Covered Product if it was
22 discontinued before the Effective Date and no longer being sold after the Effective Date unless Tosi
23 resumes sales of the discontinued Covered Product after the Effective Date.

24 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
25 lead detection result of the three (3) randomly selected samples of the Covered Product will be
26 controlling.

27 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
28 laboratory method that complies with the performance and quality control factors appropriate for the

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

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

8 **3.4.5** Nothing in this Consent Judgment shall limit Tosi’s ability to conduct, or
9 require that others conduct, additional testing of the Covered Product, including the raw materials
10 used in their manufacture.

11 **3.4.6** Within thirty (30) days of ERC’s written request, Tosi shall deliver lab
12 reports obtained pursuant to Section 3.4 to ERC. Tosi shall retain all test results and documentation
13 for a period of five years from the date of each test.

14 **3.4.7** The testing requirements under this Section 3.4 do not apply during any
15 period in which Tosi is not engaging in California Sales Practices as to the Covered Product, or
16 labels the product in compliance with the requirements of Section 3.2.

17 **4. SETTLEMENT PAYMENT**

18 **4.1** In full satisfaction of all potential civil penalties, additional settlement
19 payments, attorney’s fees, and costs, Tosi shall make a total payment of \$500.00 (“Total
20 Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). Tosi shall
21 make this payment by wire transfer to ERC’s account, for which ERC will give Tosi the
22 necessary account information. The Total Settlement Amount shall be apportioned as follows:

23 **4.2** \$100.00 shall be considered a civil penalty pursuant to California Health and
24 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$75.00) of the civil penalty to the
25 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
27 Code section 25249.12(c). ERC will retain the remaining 25% (\$25.00) of the civil penalty.

28 **4.3** \$100.00 shall be distributed to ERC as reimbursement to ERC for reasonable

1 costs incurred in bringing this action.

2 **4.4** \$300.00 shall be distributed to ERC for its in-house legal fees. Except as
3 explicitly provided herein, each Party shall bear its own fees and costs.

4 **4.5** In the event that Tosi fails to remit the Total Settlement Amount owed under
5 Section 4 of this Consent Judgment on or before the Due Date, Tosi shall be deemed to be in
6 material breach of its obligations under this Consent Judgment. ERC shall provide written
7 notice of the delinquency to Tosi via electronic mail. If Tosi fails to deliver the Total
8 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
9 shall accrue interest at the statutory judgment interest rate provided in the California Code of
10 Civil Procedure section 685.010. Additionally, Tosi agrees to pay ERC's reasonable attorney's
11 fees and costs for any efforts to collect the payment due under this Consent Judgment.

12 **5. MODIFICATION OF CONSENT JUDGMENT**

13 **5.1** This Consent Judgment may be modified only as to injunctive terms by written
14 stipulation or joint motion of the Parties and upon entry by the Court of a modified consent
15 judgment or by motion of either Party pursuant to and upon entry by the Court of a modified
16 consent judgment executed by the Parties.

17 **5.2** If Tosi seeks to modify this Consent Judgment under Section 5.1, then Tosi
18 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and
19 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
20 written notice to Tosi within thirty (30) days of receiving the Notice of Intent. If ERC notifies
21 Tosi in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and
22 confer in good faith as required in this Section. The Parties shall meet in person, via remote
23 meeting, or by telephone within thirty (30) days of ERC's notification of its intent to meet and
24 confer. Should it become necessary, the Parties may agree in writing to different deadlines for
25 the meet-and-confer period.

26 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT** 27 **JUDGMENT**

28 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or

1 terminate this Consent Judgment.

2 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
3 Covered Product (for which no Warning has been provided), then ERC shall inform Tosi in a
4 reasonably prompt manner of its test results, including information sufficient to permit Tosi to
5 identify the Covered Product at issue. Tosi shall, within thirty (30) days following such notice,
6 provide ERC with testing information, from an independent third-party laboratory meeting the
7 requirements of Sections 3.4.3 and 3.4.4, demonstrating Tosi's compliance with the Consent
8 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
9 legal action.

10 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

25 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
26 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
27 from the Covered Product as set forth in the Notice of Violation. ERC, on behalf of itself only,
28 hereby fully releases and discharges the Released Parties from any and all claims, actions,

1 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
2 asserted, or that could have been asserted from the handling, use, or consumption of the
3 Covered Product as to any alleged violation of Proposition 65 or its implementing regulations
4 arising from the failure to provide Proposition 65 warnings on the Covered Product regarding
5 lead up to and including the Effective Date.

6 **8.3** ERC on its own behalf only, and Tosi on its own behalf only, further waive and
7 release any and all claims they may have against each other for all actions or statements made
8 or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
9 connection with the Notice and Complaint, and including the Notices of Violation dated
10 January 27, 2022 and February 17, 2022 and the original and First Amended Complaints filed
11 in this case, up through and including the Effective Date, provided, however, that nothing in
12 Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent
13 Judgment.

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

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

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

28 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to

1 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
2 exposures to lead in the Covered Product as set forth in the Notice and Complaint.

3 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
4 environmental exposures arising under Proposition 65, nor shall it apply to any of Tosi's
5 products other than the Covered Product.

6 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

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

17 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Ph: (619) 500-3090
22 Email: chris.heptinstall@erc501c3.org

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

FOR SIMPLE HEALTH LLC, individually and dba TOSI and TOSI SNACKS, S.P.C.:
Stefanie Hults, Co-Founder & CEO
1308 N. Patt Street
Anaheim, CA 92801
Email: stefanie@tosi.com

1 With a copy to:
2 Robert T. Petraglia
3 BraunHagey & Borden LLP
4 351 California St, Fl 10
5 San Francisco, CA 94104
6 Ph: (415) 599-0210
7 Email: petraglia@braunhagey.com

8 **12. COURT APPROVAL**

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

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

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

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

22 The terms of this Consent Judgment have been reviewed by the respective counsel for
23 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
24 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
25 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
26 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
27 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
28 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
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, via remote meeting,
4 by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No
5 action or motion may be filed in the absence of such a good faith attempt to resolve the dispute
6 beforehand.

7 **16. ENFORCEMENT**

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

16 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

27 This Consent Judgment has come before the Court upon the request of the Parties. The
28 Parties request the Court to fully review this Consent Judgment and, being fully informed

1 regarding the matters which are the subject of this action, to:

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

5 (2) Make the findings pursuant to California Health and Safety Code section
6 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

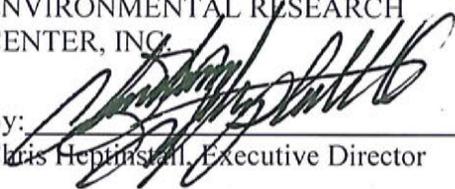
7 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
8 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

9 **IT IS SO STIPULATED:**

10

11 Dated: 12/15/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepinstall, Executive Director

12

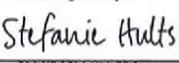
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16 Dated: 12/13/2023, 2023

SIMPLE HEALTH LLC, individually and
dba TOSI and TOSI SNACKS, S.P.C.

DocuSigned by:

By: Stefanie Hults
Its: CEO and Co-Founder

17

18

19

20

21 **APPROVED AS TO FORM:**

22

23 Dated: 12/15/23, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Charles W. Poss
In-House Counsel

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Dated: December 15, 2023

BRAUNHAGEY & BORDEN LLP

By: 
Robert T. Petraglia
Attorney for Defendant Tosi LLC,
individually and dba Tosi and Tosi
Snacks, S.P.C.

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: Tas&CFJ, 2024



Judge of the Superior Court
Keith Fong / Judge

EXHIBIT A



Environmental Research Center

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

February 3, 2022

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 product 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 this product. 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:

Simple Health LLC, individually and dba Tosi

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

Tosi Super Pops Puffed Ancient Grains Snack Cinnamon Apple – 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 this product. 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 February 3, 2019, as well as every day since the product was 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 product. 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 this product 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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product 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 Simple Health LLC, individually and dba Tosi and its 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 Simple Health LLC, individually and dba Tosi

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: February 3, 2022

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 February 3, 2022, 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
Simple Health LLC, individually and dba Tosi
14695 Candeda Place
Tustin, CA 92780

Stefanie Hults
(Registered Agent for Simple Health LLC,
individually and dba Tosi)
14695 Candeda Place
Tustin, CA 92780

Current President or CEO
Simple Health LLC, individually and dba Tosi
1308 N Patt St
Anaheim, CA 92801

On February 3, 2022, 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 February 3, 2022, 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
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Martinez, CA 94553
sgrassini@contracostada.org

Barbara Yook, District Attorney
Calaveras County
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Prop65Env@co.calaveras.ca.us

Lisa A. Smittcamp, District Attorney
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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edobroth@co.slo.ca.us

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Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

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Prop65DA@santacruzcounty.us

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

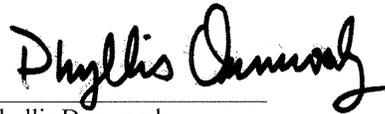
Phillip J. Cline, District Attorney
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Prop65@co.tulare.ca.us

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

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

On February 3, 2022, 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 February 3, 2022, 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
310 6th St
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, 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
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Madera, CA 93637

District Attorney, Marin
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District Attorney, Mendocino
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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
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300 N Flower St
Santa Ana, CA 92703

District Attorney, San Benito
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Hollister, CA 95023

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

District Attorney, San Mateo
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Redwood City, CA 94063

District Attorney, Shasta
County
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Redding, CA 96001

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Downieville, CA 95936

District Attorney, Siskiyou
County
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District Attorney, Solano
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Fairfield, CA 94533

District Attorney, Stanislaus
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Modesto, CA 95354

District Attorney, Sutter
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Yuba City, CA 95991

District Attorney, Tehama
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Red Bluff, CA 96080

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

District Attorney, Tuolumne
County
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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

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.