

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 Matthew R. Orr (SBN 211097)
9 Amin Wasserman Gurnani, LLP
10 515 South Flower Street, 18th Floor
11 Los Angeles, CA 90071
12 Telephone: (213) 933-2330
13 Email: matt@awglaw.com
14 Attorney for Defendants FamousFoods.com, Inc. and Fuel for Fire, Inc.

FILED
Superior Court of California
County of Alameda

04/10/2025

Clad Flake, Executive Officer / Clerk of the Court

By: A. Amponsah Deputy
A. Amponsah

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

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

17 **Plaintiff,**

18 vs.

19 **FAMOUSFOODS.COM, INC.; FUEL FOR**
20 **FIRE, INC.; and DOES 1-100**

21 **Defendants.**

CASE NO. 24CV074537

[PROPOSED] AMENDED
STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 7, 2024

Trial Date: March 9, 2026

23 **1. INTRODUCTION**

24 **1.1** On May 7, 2024, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
25 profit corporation, as a private enforcer and in the public interest, initiated this action by filing
26 a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
27 provisions of California Health and Safety Code section 25249.5 *et seq.*
28 (“Proposition 65”), against FamousFoods.com, Inc. (“FamousFoods”) and Does 1-100. On

1 November 27, 2024, ERC filed a First Amended Complaint (the operative Complaint,
2 hereinafter referred to as “Complaint”) adding Fuel For Fire, Inc. (“Fuel for Fire” and, together
3 with FamousFoods, the “Defendants”) as a party to the action. In this action, ERC alleges that
4 a number of products manufactured, distributed, or sold by Defendants contain lead,
5 perfluorononanoic acid (PFNA), and/or perfluorooctanoic acid (PFOA), chemicals listed under
6 Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these
7 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
8 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Fuel For
9 Fire 10g Plant Protein Fruit Smoothie Chocolate Strawberry (lead, PFOA, PFNA), (2) Fuel For
10 Fire 10g Protein Fruit Smoothie Banana Cocoa (lead, PFOA, PFNA), and (3) Fuel For Fire 10g
11 Protein Fruit Smoothie Mixed Berry (PFOA).

12 The products “Fuel For Fire 10g Plant Protein Fruit Smoothie Chocolate Strawberry” and
13 “Fuel For Fire 10g Protein Fruit Smoothie Banana Cocoa” are collectively referred to as either
14 the “Lead Covered Products” or the “PFNA Covered Products.”

15 **1.2** ERC and Fuel for Fire are hereinafter referred to individually as a “Party” or
16 collectively as the “Parties.”

17 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
18 causes, helping safeguard the public from health hazards by reducing the use and misuse of
19 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
20 and encouraging corporate responsibility.

21 **1.4** Solely for purposes of this Amended Stipulated Consent Judgment (“Consent
22 Judgment”), Fuel for Fire does not contest ERC’s allegation that Fuel for Fire is a business entity
23 that has employed ten or more persons at all times relevant to this action and qualifies as a
24 “person in the course of doing business” within the meaning of Proposition 65. Fuel for Fire
25 manufactures, distributes, and/or sells the Covered Products.

26 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
27 dated January 19, 2024, and January 26, 2024, that were served on the California Attorney
28 General, other public enforcers, and the Defendants (“Notices”). True and correct copies of the

1 60-Day Notices dated January 19, 2024, and January 26, 2024, are attached hereto as **Exhibits**
2 **A** and **B** and each is incorporated herein by reference. More than 60 days have passed since the
3 Notices were served on the Attorney General, public enforcers, and the Defendants and no
4 designated governmental entity has filed a Complaint against the Defendants with regard to the
5 Covered Products or the alleged violations.

6 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
7 California consumers exposes them to lead and/or PFNA and/or PFOA without first receiving
8 clear and reasonable warnings from Defendants, which is in violation of California Health and
9 Safety Code section 25249.6. Defendants denied and continue to deny all material allegations
10 contained in the Notices and Complaint.

11 **1.7** The Parties have entered into this Consent Judgment in order to settle,
12 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
13 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
14 or be construed as an admission by any of the Parties or by any of their respective officers,
15 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
16 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
17 issue of law, or violation of law.

18 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
20 any current or future legal proceeding unrelated to these proceedings.

21 **1.9** The Effective Date of this Consent Judgment is ten (10) calendar days after the
22 date on which it is entered as a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

24 For purposes of this Consent Judgment and any further court action that may become
25 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
26 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
27 over the Defendants as to the acts alleged in the Complaint, that venue is proper in Alameda
28 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final

1 resolution of all claims up through and including the Effective Date that were or could have been
2 asserted in this action based on the facts alleged in the Notices and Complaint.

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

4 **3.1** Beginning thirty (30) days after the Effective Date (the “Compliance Date”),
5 Fuel for Fire shall be permanently enjoined from manufacturing for sale in the State of
6 California, “Distributing into the State of California,” or directly selling in the State of
7 California, any Lead Covered Product that exposes a person to a “Daily Lead Exposure Level”
8 of more than 0.5 micrograms of lead per day unless it meets the warning requirements under
9 Section 3.2. Also, beginning on the Compliance Date, Fuel for Fire shall be permanently
10 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
11 California,” or directly selling in the State of California, any Covered Products that expose a
12 person to PFOA or PFNA that can be reliably detected pursuant to the testing methodologies
13 and level of quantification set forth in Section 3 unless they meet the warning requirements
14 under Section 3.2.

15 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
16 of California” shall mean to directly ship a Covered Product into California for sale in
17 California or to sell, send, or distribute a Covered Product to a distributor that Fuel for Fire
18 knows or has reason to know will ship the Covered Products to California and/or sell the
19 Covered Products in California.

20 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
21 Level” shall be measured in micrograms, and shall be calculated using the following formula:
22 micrograms of lead per gram of product, multiplied by grams of product per serving of the
23 product (using the largest serving size appearing on the product label), multiplied by servings
24 of the product per day (using the largest number of recommended daily servings appearing on
25 the label), which equals micrograms of lead exposure per day. If the label contains no
26 recommended daily servings, then the number of recommended daily servings shall be one.

27 **3.2 Clear and Reasonable Warnings**

28 If Fuel for Fire is required to provide a warning pursuant to Section 3.1, Fuel for Fire shall

1 provide one of the following warning statements (“Warning”):

2 **OPTION 1:**

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

6 OR

7 **OPTION 2:**

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

9 Fuel for Fire shall use the phrase “cancer and” in the Warning if Fuel for Fire has reason
10 to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead and/or if
11 PFOA is present as determined pursuant to the quality control methodology set forth in Section
12 3.4 or if Fuel for Fire has reason to believe that another Proposition 65 chemical is present which
13 may require a cancer warning. As identified in the brackets, for the Option 1 Warning, the
14 warning shall identify at least one chemical responsible for a cancer and/or reproductive warning;
15 however if a single chemical supports a warning for cancer and reproductive warning, only that
16 single chemical need be listed. In any event, if there is a chemical present at a level that requires a
17 cancer warning, the chemical requiring use of the phrase “cancer and” in the Warning shall
18 always be identified.

19 The Warning shall be securely affixed to or printed upon the label of each Covered
20 Product, and it must be set off from other surrounding information and enclosed in a box. In
21 addition, for any Covered Product sold over the internet, the Warning shall appear on the
22 Covered Product’s primary display page or on the checkout page when a California delivery
23 address is indicated for any purchase of any Covered Product, or the Warning may otherwise
24 be provided by prominently displaying the Warning to the purchaser prior to completing the
25 purchase. Any Warning must be presented in a manner so as to reasonably identify which
26 products are subject to the Warning. The Warning may be provided by a clearly marked
27 hyperlink using the word “**WARNING**” in all capital and bold letters. If the Warning is
28 provided by a clearly marked hyperlink, the hyperlink must go directly to a page prominently

1 displaying the Warning without content that detracts from the Warning. A Warning is not
2 prominently displayed if the purchaser has to search for it in the general content of the website.

3 For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow
4 equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning,
5 in a size no smaller than the height of the word “**WARNING.**” Where the label for the product is
6 not printed using the color yellow, the symbol may be printed in black and white. If the Option 2
7 Warning is displayed on the label of a Covered Product, it must be in a type size no smaller than
8 the largest type size used for other consumer information on the product, and in no event in a type
9 size smaller than 6-point type. No statements intended to or likely to have the effect of
10 diminishing the impact of the Warning on the average lay person shall accompany the Warning.
11 Further no statements may accompany the Warning that state or imply that the source of the listed
12 chemical has an impact on or results in a less harmful effect of the listed chemical.

13 Fuel for Fire must display the above Warning with such conspicuousness, as compared
14 with other words, statements or designs on the label, or on its website, if applicable, to render the
15 Warning likely to be read and understood by an ordinary individual under customary conditions
16 of purchase or use of the product. For both the Option 1 and Option 2 Warnings, the word
17 “**WARNING**” shall be in all capital letters and in bold print. Where a sign or label used to
18 provide the Warning for a Covered Product includes consumer information about the Covered
19 Product in a language other than English, the Warning must also be provided in that language in
20 addition to English.

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 is 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 that does not contain any level of
26 PFOA that can be reliably detected using available technologies as determined by the quality
27 control methodology described in Section 3.4, and that is not known by Fuel for Fire to contain
28 other chemicals that violate Proposition 65’s safe harbor thresholds. A Conforming Lead

1 Covered Product is a Covered Product for which the “Daily Lead Exposure Level” is no greater
2 than 0.5 micrograms of lead per day as determined by the exposure methodology set forth in
3 Section 3.1.2 and the quality control methodology described in Section 3.4, and that is not known
4 by Fuel for Fire to contain other chemicals that violate Proposition 65’s safe harbor thresholds. A
5 Conforming PFNA Covered Product is a PFNA Covered Product that does not contain any level
6 of PFNA that can be reliably detected using available technologies as determined by the quality
7 control methodology described in Section 3.4, and that is not known by Fuel for Fire to contain
8 other chemicals that violate Proposition 65’s safe harbor thresholds.

9 **3.4 Testing and Quality Control Methodology**

10 **3.4.1** Subject to Section 3.4.7, beginning within one year of the Effective
11 Date, for Covered Products that are manufactured for sale in the State of California,
12 Distributed into the State of California, or are directly sold in the State of California, Fuel for
13 Fire shall arrange for lead and PFNA and PFOA testing of such Covered Products at least once
14 a year for a minimum of three consecutive years by arranging for testing of three (3) randomly
15 selected samples of each of the Covered Products, in the form intended for sale to the
16 California end-user, which Fuel for Fire intends to sell or is manufacturing for sale in
17 California, directly selling to a consumer in California or “Distributing into the State of
18 California.” If tests conducted pursuant to this Section demonstrate that no Warning is required
19 for a Covered Product during each of three consecutive years, then the testing requirements of
20 this Section will no longer be required as to that Covered Product. However, if during or after
21 the five-year testing period, Fuel for Fire reformulates any of the Covered Products, Fuel for
22 Fire shall test that Covered Product annually for at least two (2) consecutive years after such
23 change is made.

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 Products will
26 be controlling.

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

1 for the method used, including limit of detection and limit of quantification, sensitivity,
2 accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass
3 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
4 mg/kg for lead, and less than or equal to 0.980 ng/L of PFNA and/or PFOA.

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

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

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

15 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
16 any Covered Product for which Fuel for Fire is providing a Warning, continuously and without
17 interruption from the Compliance Date, pursuant to Section 3.2 of this Agreement. In the
18 event a Warning is provided after the Compliance Date but Fuel for Fire thereafter ceases to
19 provide the Warning, the testing and reporting requirements of Section 3.4 of this Agreement
20 shall apply beginning immediately after the date the Warning ceases to be provided, unless
21 Fuel for Fire can show to the satisfaction of ERC that the cessation in providing the Warning
22 was a temporary error that was resolved when discovered.

23 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
24 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
25 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this
26 Consent Judgment is intended by either Party to set a precedent for the level of lead, PFOA,
27 PFNA, or other chemicals that is permissible in consumer products under Proposition 65.

28 ///

1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
3 attorney’s fees, and costs, Fuel for Fire shall make a total payment of \$60,000.00 (“Total
4 Settlement Amount”) to ERC in three periodic payments (the “Periodic Payments”) according
5 to the following payment schedule (“Due Dates”):

- 6 • Payment 1 -- \$20,000.00 within 5 days of the Effective Date (the first Due Date)
- 7 • Payment 2 -- \$20,000.00 within 35 days of the Effective Date (the second Due Date)
- 8 • Payment 3 -- \$20,000.00 within 65 days of the Effective Date (the third Due Date)

9 Fuel for Fire shall make these payments by wire transfer to ERC’s account, for which
10 ERC will give Fuel for Fire the necessary account information. The Total Settlement Amount
11 shall be apportioned as follows:

12 **4.2** \$9,000.00 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,750.00) of the civil penalty to the
14 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,250.00) of the civil penalty.

17 **4.3** \$5,956.19 shall be distributed to ERC as reimbursement to ERC for reasonable
18 costs incurred in bringing this action.

19 **4.4** \$6,574.03 shall be distributed to ERC as an Additional Settlement Payment
20 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to
21 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities
22 that address the same public harm as allegedly caused by Fuel for Fire in this matter. These
23 activities are detailed below and support ERC’s overarching goal of reducing and/or
24 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s
25 activities have had, and will continue to have, a direct and primary effect within the State of
26 California because California consumers will be benefitted by the reduction and/or elimination
27 of exposure to lead and/or PFNA and/or PFOA in dietary supplements and/or by providing
28 clear and reasonable warnings to California consumers prior to ingestion of the products.

1 Based on a review of past years' actual budgets, ERC is providing the following list of
2 activities ERC engages in to protect California consumers through Proposition 65 citizen
3 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
4 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing
5 dietary supplement products that may contain lead and/or PFNA and/or PFOA and are sold to
6 California consumers. This work includes continued monitoring and enforcement of past
7 consent judgments and settlements to ensure companies are in compliance with their
8 obligations thereunder, with a specific focus on those judgments and settlements concerning
9 lead and/or PFNA and/or PFOA. This work also includes investigation of new companies that
10 ERC does not obtain any recovery through settlement or judgment; (2) VOLUNTARY
11 COMPLIANCE PROGRAM (up to 10-20%): maintaining ERC's Voluntary Compliance
12 Program by acquiring products from companies, developing and maintaining a case file, testing
13 products from these companies, providing the test results and supporting documentation to the
14 companies, and offering guidance in warning or implementing a self-testing program for lead
15 and/or PFNA and/or PFOA in dietary supplement products; and (3) "GOT LEAD"
16 PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers
17 of contaminated products that reach California consumers by providing access to free testing
18 for lead in dietary supplement products (Products submitted to the program are screened for
19 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
20 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
21 that submitted the product).

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

27 **4.5** \$38,469.78 shall be distributed to ERC for its in-house legal fees. Except as
28 explicitly provided herein, each Party shall bear its own fees and costs.

1 **4.6** In the event that Fuel for Fire fails to remit, in full, any of the Periodic
2 Payments owed under Section 4.1 of this Consent Judgment on or before the applicable Due
3 Date, Fuel for Fire shall be deemed to be in material breach of its obligations under this
4 Consent Judgment. ERC shall provide written notice of the delinquency to Fuel for Fire via
5 electronic mail. If Fuel for Fire fails to deliver the delinquent payment within five (5) days
6 from the written notice, the Total Settlement Amount, less any amounts previously paid
7 pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the
8 statutory judgment interest rate provided in the California Code of Civil Procedure section
9 685.010. Additionally, Fuel for Fire agrees to pay ERC’s reasonable attorneys’ fees and costs
10 for any efforts to collect the payment(s) due under this Consent Judgment. Fuel for Fire agrees
11 that any release, under Section 8 if this Consent Judgment, in favor of Fuel for Fire or the
12 Released Parties shall not be applicable during any period of time that Fuel for Fire is in
13 material breach of its obligations under Section 4 of the Consent Judgment.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

15 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
16 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
17 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
18 modified consent judgment.

19 **5.2** If either Party seeks to modify this Consent Judgment under Section 5.1, then
20 the requesting party must provide written notice to ERC of its intent (“Notice of Intent”). If
21 the non-requesting party seeks to meet and confer regarding the proposed modification in the
22 Notice of Intent, then it must provide written notice to the requesting party within thirty (30)
23 days of receiving the Notice of Intent. If the non-requesting party notifies the requesting party
24 in a timely manner of its intent to meet and confer, then the Parties shall meet and confer in
25 good faith as required in this Section. The Parties shall meet in person, via remote meeting, or
26 by telephone within thirty (30) days of such notification of intent to meet and confer. Within
27 thirty (30) days of such meeting, if the non-requesting party disputes the proposed
28 modification, it shall provide to the requesting party 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 Fuel for Fire initiates or otherwise requests a modification
5 under Section 5.1, and the meet and confer process leads to a joint motion or joint application
6 for a modification of the Consent Judgment, Fuel for Fire 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 that was manufactured after the
14 Compliance Date, or that has been sold or distributed into California after the Compliance
15 Date, fails to qualify as a Conforming Covered Product (for which ERC alleges that no
16 Warning has been provided), then ERC shall inform Fuel for Fire in a reasonably prompt
17 manner of its test results, including information sufficient to permit Fuel for Fire to identify the
18 Covered Products at issue. Fuel for Fire shall, within a reasonably prompt time, not to exceed
19 forty-five (45) days, following such notice, provide ERC with testing information, from an
20 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4 and/or
21 otherwise demonstrating Fuel for Fire's compliance with the Consent Judgment. The Parties
22 shall first attempt to resolve the matter prior to ERC taking any further legal action.

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
26 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
27 retailers, predecessors, successors, and assigns. Notwithstanding any other clause or language in
28 this Consent Judgment, this Consent Judgment shall have no application to any Covered Product

1 that is distributed or sold exclusively outside the State of California and that is not used by
2 California consumers.

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

4 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
5 behalf of itself and in the public interest, and Fuel for Fire and its respective officers, directors,
6 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
7 franchisees, licensees, customers (not including private label customers of Fuel for Fire),
8 distributors (including but not limited to, FamousFoods), wholesalers, retailers (including but
9 not limited to, Sprouts Farmers Market, Inc., Sprouts Farmers Markets Holdings, LLC, and SF
10 Markets, LLC), and all other upstream and downstream entities in the distribution chain of any
11 Covered Product, and the predecessors, successors, and assigns of any of them (collectively,
12 “Released Parties”).

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

24 **8.3** ERC on its own behalf only, and Fuel for Fire on its own behalf only, further
25 waive and release any and all claims they may have against each other for all actions or
26 statements made or undertaken in the course of seeking or opposing enforcement of
27 Proposition 65 in connection with the Notices and Complaint up through and including the
28 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s

1 right to seek to enforce the terms of this Consent Judgment.

2 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
3 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
4 discovered. ERC on behalf of itself only, and Fuel for Fire on behalf of itself only,
5 acknowledge that this Consent Judgment is expressly intended to cover and include all such
6 claims up through and including the Effective Date, including all rights of action therefore.
7 ERC and Fuel for Fire acknowledge that the claims released in Sections 8.2 and 8.3 above may
8 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
9 such unknown claims. California Civil Code section 1542 reads as follows:

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

14 ERC on behalf of itself only, and Fuel for Fire on behalf of itself only, acknowledge and
15 understand the significance and consequences of this specific waiver of California Civil Code
16 Section 1542.

17 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
18 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
19 exposures to lead in the Lead Covered Products and/or PFNA in the PFNA Covered Products
20 and/or PFOA in the Covered Products as set forth in the Notices and Complaint.

21 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
22 environmental exposures arising under Proposition 65, nor shall it apply to any of Fuel for
23 Fire’s products other than Covered Products that are manufactured for sale in California, sold
24 to consumers in California, or “Distributed into the State of California.”

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1 **10. GOVERNING LAW**

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

4 **11. PROVISION OF NOTICE**

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

8 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
9 Chris Heptinstall, Executive Director, Environmental Research Center
10 3111 Camino Del Rio North, Suite 400
11 San Diego, CA 92108
12 Ph: (619) 500-3090
13 Email: chris.heptinstall@erc501c3.org

14 With a copy to:
15 Charles W. Poss
16 Environmental Research Center, Inc.
17 3111 Camino Del Rio North, Suite 400
18 San Diego, CA 92108
19 Ph: (619) 500-3090
20 Email: charles.poss@erc501c3.org

21 **FOR FUEL FOR FIRE, INC.:**
22 C. Scott Webster
23 Chief Financial Officer
24 60 Kendrick Street, Suite 207
25 Needham, MA 02494
26 Email: Scott@centermancapital.com

27 With a copy to:
28 Matthew R. Orr
Amin Wasserman Gurnani, LLP
515 South Flower Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 933-2330
Email: matt@awglaw.com

///

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1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

1 **16. ENFORCEMENT**

2 The Parties may, by motion or order to show cause before the Superior Court of
3 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any
4 action brought by a Party to enforce the Consent Judgment, such Party may seek whatever
5 fines, costs, penalties, or remedies as are provided by law for the other Party’s failure to
6 comply with the Consent Judgment.

7 **17. ENTIRE AGREEMENT, AUTHORIZATION**

8 **17.1** This Consent Judgment contains the sole and entire agreement and
9 understanding of the Parties with respect to the entire subject matter herein, including any and
10 all prior discussions, negotiations, commitments, and understandings related thereto. No
11 representations, oral or otherwise, express or implied, other than those contained herein have
12 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
13 herein, shall be deemed to exist or to bind any Party.

14 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

24 (2) Make the findings pursuant to California Health and Safety Code section
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

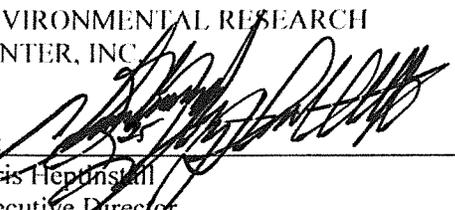
26 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
27 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

28 ///

1 **IT IS SO STIPULATED:**

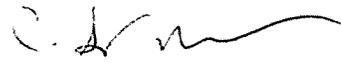
2 Dated: 1/14/, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
5 Chris Heptinstall
6 Executive Director

7 Dated: January 14, 2025

FUEL FOR FIRE, INC.

8 
9 By: C. Scott Webster
10 Its: CFO

11 **APPROVED AS TO FORM:**

12
13 Dated: January 14, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

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

19 Dated: January 13, 2025

AMIN WASSERMAN GURNANI, LLP

20
21 By: Matt Orr
22 Matthew R. Orr
23 Attorney for Defendants
24
25
26
27
28

~~PROPOSED~~ 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: 04/10/2025, 2025



Judge of the Superior Court

Rebekah Evenson / Judge

EXHIBIT A



Environmental Research Center

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

January 19, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Fuel For Fire, Inc.
FamousFoods.com, Inc.

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

- 1. Fuel For Fire 10g Plant Protein Fruit Smoothie Chocolate Strawberry - Lead**
- 2. Fuel For Fire 10g Protein Fruit Smoothie Banana Cocoa - Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 19, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fuel For Fire, Inc., FamousFoods.com, Inc., and their 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 Fuel For Fire, Inc. and FamousFoods.com, Inc.

I, Charles Poss, declare:

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

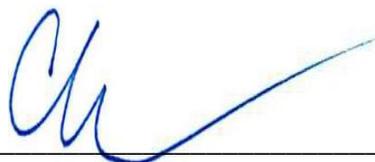
2. I am an attorney for the noticing party.

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

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

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

Dated: January 19, 2024



Charles Poss

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On January 19, 2024, 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
Fuel For Fire, Inc.
13 Tech Circle
Natick, MA 01760

Robert Gilfeather
(Registered Agent for Fuel For Fire, Inc.)
13 Tech Circle
Natick, MA 01760

Current President or CEO
Fuel For Fire, Inc.
60 Kendrick St, Ste 207
Needham Heights, MA 02494

Current President or CEO
FamousFoods.com, Inc.
376 Nash Rd
New Bedford, MA 02746

The Corporation Trust Company
(Registered Agent for Fuel For Fire, Inc.)
1209 N. Orange St.
Wilmington, DE 19801

Current President or CEO
FamousFoods.com, Inc. and Fuel for Fire Inc.
PO Box 50370
New Bedford, MA 02746

Thomas J. Moylan, Esq.
(Registered Agent for FamousFoods.com, Inc.)
c/o Gordon & Rees, LLP
21 Custom House St, 5th Floor
Boston, MA 02110

On January 19, 2024, 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 January 19, 2024, 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.*

January 19, 2024

Page 5

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

James Clinchard, Assistant District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667
EDCDAPROP65@edcda.us

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Devin Chandler, Program Coordinator
Lassen County
2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

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

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

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

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

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

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@ocdapa.org

Morgan Briggs Gire, District Attorney
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

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

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

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

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

January 19, 2024

Page 6

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

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

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

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

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

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatty.org

Jill Ravitch, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

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

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

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

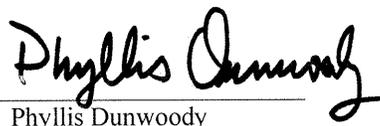
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On January 19, 2024, 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 January 19, 2024, 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, 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, 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, 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

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.

EXHIBIT B



Environmental Research Center

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

January 26, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Fuel For Fire, Inc.
FamousFoods.com, 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. Fuel For Fire 10g Plant Protein Fruit Smoothie Chocolate Strawberry - Perfluorooctanoic Acid (PFOA), Perfluorononanoic acid (PFNA)**
- 2. Fuel For Fire 10g Protein Fruit Smoothie Banana Cocoa - Perfluorooctanoic Acid (PFOA), Perfluorononanoic acid (PFNA)**

3. Fuel For Fire 10g Protein Fruit Smoothie Mixed Berry - Perfluorooctanoic Acid (PFOA)

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause cancer.

On December 31, 2021, the State of California officially listed Perfluorononanoic acid (PFNA) and its salts as a chemical known to cause reproductive toxicity.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 26, 2021, 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 Violators violated Proposition 65 because they 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 Violators to: (1) recall the identified products so as to eliminate further exposures to the identified chemicals, and/or (2) affix clear and reasonable Prop 65 warning labels for products sold in the future while reformulating such products to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemicals in the listed products, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

January 26, 2024

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Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fuel For Fire, Inc., FamousFoods.com, Inc., and their 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 Fuel For Fire, Inc. and FamousFoods.com, Inc.

I, Charles Poss, declare:

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

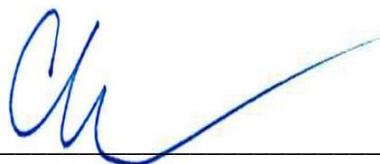
2. I am an attorney for the noticing party.

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

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

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

Dated: January 26, 2024



Charles Poss

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On January 26, 2024, 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
Fuel For Fire, Inc.
13 Tech Circle
Natick, MA 01760

Robert Gilfeather
(Registered Agent for Fuel For Fire, Inc.)
13 Tech Circle
Natick, MA 01760

Current President or CEO
Fuel For Fire, Inc.
60 Kendrick St, Ste 207
Needham Heights, MA 02494

Current President or CEO
FamousFoods.com, Inc.
376 Nash Rd
New Bedford, MA 02746

The Corporation Trust Company
(Registered Agent for Fuel For Fire, Inc.)
1209 N. Orange St.
Wilmington, DE 19801

Current President or CEO
FamousFoods.com, Inc. and Fuel for Fire Inc.
PO Box 50370
New Bedford, MA 02746

Thomas J. Moylan, Esq.
(Registered Agent for FamousFoods.com, Inc.)
c/o Gordon & Rees, LLP
21 Custom House St, 5th Floor
Boston, MA 02110

On January 26, 2024, 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 January 26, 2024, 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.*

January 26, 2024

Page 6

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

James Clinchard, Assistant District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667
EDCDAPROP65@edcda.us

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Devin Chandler, Program Coordinator
Lassen County
2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

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

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

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

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

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

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@ocdapa.org

Morgan Briggs Gire, District Attorney
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

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

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

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

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

January 26, 2024

Page 7

San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcda.org

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

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatty.org

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

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

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

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

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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

Jill Ravitch, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

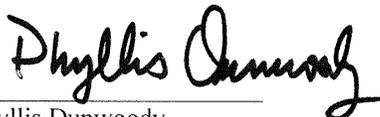
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

On January 26, 2024, 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 January 26, 2024, 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, 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, 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, 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

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.