

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

Philip L. Hinerman (SBN 284231)  
Christin Kim (SBN 348256)  
Fox Rothschild LLP  
345 California St, Ste 2200  
San Francisco, CA 94104  
Ph: (415) 364-5540  
Email: phinerman@foxrothschild.com; christinkim@foxrothschild.com  
Attorney for Defendant Big Spoon Roasters LLC

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

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

**Plaintiff,**

**vs.**

**BIG SPOON ROASTERS LLC; and DOES  
1-100**

**Defendants.**

**CASE NO. 25CV114930**

**~~PROPOSED~~ STIPULATED  
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 7, 2025

Trial Date: None set

**1. INTRODUCTION**

**1.1** On March 7, 2025, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Big Spoon Roasters LLC (“Big Spoon Roasters”) and Does 1-100.

**FILED**  
Superior Court of California  
County of Alameda

06/12/2025

Clad Fike, Executive Officer / Clerk of the Court

By:  Deputy  
K. Ortega

1 In this action, ERC alleges that a number of products manufactured, distributed, or sold by Big  
2 Spoon Roasters contain lead, a chemical listed under Proposition 65 as a carcinogen and  
3 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65  
4 warning. These products (referred to hereinafter individually as a “Covered Product” or  
5 collectively as “Covered Products”) are: (1) Big Spoon Roasters Lemon Blueberry Cashew  
6 Butter Bar, (2) Big Spoon Roasters Cranberry Cashew Peanut Butter Bar, (3) Big Spoon  
7 Roasters Figgy Chai Peanut Butter Bar, (4) Big Spoon Roasters Cherry Chocolate Peanut  
8 Butter Bar, (5) Big Spoon Roasters Apple Ginger Almond Butter Bar, and (6) Big Spoon  
9 Roasters Apricot Pepita Peanut Butter Bar.

10 **1.2** ERC and Big Spoon Roasters are hereinafter referred to individually as a  
11 “Party” or collectively as the “Parties.”

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

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

20 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
21 dated December 18, 2024 that was served on the California Attorney General, other public  
22 enforcers, and Big Spoon Roasters (“Notice”). A true and correct copy of the 60-Day Notice  
23 dated December 18, 2024 is attached hereto as **Exhibit A** and is incorporated herein by  
24 reference. More than 60 days have passed since the Notice was served on the Attorney  
25 General, public enforcers, and Big Spoon Roasters and no designated governmental entity has  
26 filed a Complaint against Big Spoon Roasters with regard to the Covered Products or the  
27 alleged violations.

28 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products by

1 California consumers exposes them to lead without first receiving clear and reasonable  
2 warnings from Big Spoon Roasters, which is in violation of California Health and Safety Code  
3 section 25249.6. Big Spoon Roasters denies all material allegations contained in the Notice and  
4 Complaint.

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

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

15 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered  
16 as a Judgment by this Court. The Compliance Date is the date that is 30 days after the  
17 Effective Date.

## 18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning on the Compliance Date, Big Spoon Roasters shall be permanently  
28 enjoined from manufacturing for sale in the State of California, "Distributing into the State of

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

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

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

### **3.2 Clear and Reasonable Warnings**

If Big Spoon Roasters is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized (“Warning”):

#### **OPTION 1:**

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

OR

#### **OPTION 2:**

**CALIFORNIA WARNING:** Risk of [cancer and] reproductive harm from exposure to lead. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

OR

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1        **OPTION 3:**

2            **CALIFORNIA WARNING:** Can expose you to lead, a [carcinogen and]  
3            reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

4            For all Options, the Warning shall begin either with the word “**CALIFORNIA**  
5 **WARNING,**” as indicated above, or the word(s) “**CA WARNING**” or “**WARNING,**” in all  
6 capital letters and bold print. Big Spoon Roasters shall use the phrase “cancer and” in the Option  
7 1 and Option 2 Warnings or “carcinogen and” in the Option 3 Warning (each phrase referred to  
8 individually as a “Cancer Phrase”) if Big Spoon Roaster knows that the “Daily Lead Exposure  
9 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control  
10 methodology set forth in Section 3.4 or if Big Spoon Roasters knows that another Proposition 65  
11 chemical is present at a level that requires a cancer warning. If there is a chemical present at a  
12 level that requires a cancer warning, the chemical requiring use of the Cancer Phrase in the  
13 Warning shall always be identified.

14            The Warning shall be securely affixed to or printed upon the label of each Covered  
15 Product and it must be set off from other surrounding information and enclosed in a box. In  
16 addition, for any Covered Product sold over the internet, the Warning shall appear on the Covered  
17 Product’s primary product display page or on the checkout page when a California delivery  
18 address is indicated for any purchase of any Covered Product. The Warning may be provided by a  
19 clearly marked hyperlink using the word “**WARNING**” (or the words “**CA WARNING**” or  
20 “**CALIFORNIA WARNING**”) in all capital and bold letters. If the Warning is provided by a  
21 clearly marked hyperlink, the hyperlink must go directly to a page prominently displaying the  
22 Warning without content that detracts from the Warning. A Warning is not prominently displayed  
23 if the purchaser has to search for it in the general content of the website. If the Warning is  
24 provided on the checkout page, an asterisk or other identifying method must be utilized to identify  
25 which products on the checkout page are subject to the Warning.

26            The Warning shall be at least the same size as the largest of any other health or safety  
27 warnings also appearing on the website or on the label, but in no event shall the Warning be in  
28 a type size smaller than 6-point type. No statements intended to or likely to have the effect of

1 diminishing the impact of the Warning on the average lay person shall accompany the  
2 Warning. Further, no statements may accompany the Warning that state or imply that the  
3 source of the listed chemical has an impact on or results in a less harmful effect of the listed  
4 chemical.

5 Big Spoon Roasters must display the above Warning with such conspicuousness, as  
6 compared with other words, statements or designs on the label, or on its website, if applicable, to  
7 render the Warning likely to be read and understood by an ordinary individual under customary  
8 conditions of purchase or use of the product. Where a sign or label used to provide the Warning  
9 for a Covered Product includes consumer information about the Covered Product in a language  
10 other than English, the Warning must also be provided in that language in addition to English.

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

### 14 **3.3 Conforming Covered Products**

15 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
16 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure  
17 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
18 3.4, and that is not known by Big Spoon Roasters to contain other chemicals that violate  
19 Proposition 65’s safe harbor thresholds.

### 20 **3.4 Testing and Quality Control Methodology**

21 **3.4.1** Beginning within one year of the Effective Date, Big Spoon Roasters  
22 shall arrange for lead testing of the Covered Products at least once a year for a minimum of  
23 five (5) consecutive years by arranging for testing of a randomly selected sample of each of the  
24 Covered Products being marketed, in the form intended for sale to the end-user, which Big  
25 Spoon Roasters intends to sell or is manufacturing for sale in California, directly selling to a  
26 consumer in California or “Distributing into the State of California.” If tests conducted  
27 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
28 each of five consecutive years, then the testing requirements of this Section will no longer be

1 required as to that Covered Product. However, if, after the five-year testing period, Big Spoon  
2 Roasters changes ingredient suppliers for any of the Covered Products and/or reformulates any  
3 of the Covered Products, Big Spoon Roasters shall require that any new ingredient or  
4 formulation meet a standard of not causing the Covered Product(s) to expose a person to a  
5 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day. Furthermore, Big  
6 Spoon Roasters shall test all new formulations to ensure compliance with Proposition 65  
7 before finalizing them in production.

8               **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
9 lead detection result of the randomly selected sample of the Covered Products will be  
10 controlling.

11               **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
12 laboratory method that complies with the performance and quality control factors appropriate  
13 for the method used, including limit of detection and limit of quantification, sensitivity,  
14 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
15 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
16 mg/kg.

17               **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
18 independent third party laboratory certified by the California Environmental Laboratory  
19 Accreditation Program, the Colorado Department of Public Health, an independent food testing  
20 laboratory accredited with ISO/IEC 17025:2017 or its successor, or an independent third-party  
21 laboratory that is registered with the United States Food & Drug Administration.

22               **3.4.5** Nothing in this Consent Judgment shall limit Big Spoon Roasters’  
23 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
24 including the raw materials used in their manufacture.

25               **3.4.6** Within thirty (30) days of ERC’s written request, Big Spoon Roasters  
26 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Big Spoon Roasters shall  
27 retain all test results and documentation for a period of five years from the date of each test.

28               **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC

1 from obtaining and relying upon its own testing for purposes of enforcement, so long as such  
2 testing meets the requirements of Sections 3.4.3 and 3.4.4. For the purpose of enforcement, ERC  
3 may only test Covered Product samples purchased more than 120 days after the Effective Date.  
4 Nothing in Section 3.4 of this Consent Judgment is intended by either party to set a precedent for  
5 the level of lead or other chemicals that is permissible in consumer products under Proposition  
6 65.

#### 7 **4. SETTLEMENT PAYMENT**

8 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
9 payments, attorney's fees, and costs, Big Spoon Roasters shall make a total payment of  
10 \$27,500.00 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due  
11 Date"). Big Spoon Roasters shall make this payment by wire transfer to ERC's account, for  
12 which ERC will give Big Spoon Roasters the necessary account information. The Total  
13 Settlement Amount shall be apportioned as follows:

14 **4.2** \$4,125.00 shall be considered a civil penalty pursuant to California Health and  
15 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$3,093.75) of the civil penalty to the  
16 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
17 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
18 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,031.25) of the civil penalty.

19 **4.3** \$2,100.76 shall be distributed to ERC as reimbursement to ERC for reasonable  
20 costs incurred in bringing this action.

21 **4.4** \$21,274.24 shall be distributed to ERC for its in-house legal fees. Except as  
22 explicitly provided herein, each Party shall bear its own fees and costs.

23 **4.5** In the event that Big Spoon Roasters fails to remit the Total Settlement Amount  
24 owed under Section 4 of this Consent Judgment on or before the Due Date, Big Spoon Roasters  
25 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC  
26 shall provide written notice of the delinquency to Big Spoon Roasters via electronic mail. If Big  
27 Spoon Roasters fails to deliver the Total Settlement Amount within five (5) days from the  
28 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment



1 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,  
2 Big Spoon Roasters agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to  
3 collect the payment due under this Consent Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

22 **5.3** In the event that Big Spoon Roasters initiates or otherwise requests a  
23 modification under Section 5.1, and the meet and confer process leads to a joint motion or joint  
24 application for a modification of the Consent Judgment, Big Spoon Roasters shall reimburse  
25 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process  
26 and filing and arguing the motion or application.

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1       **6.       RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
2       **JUDGMENT**

3               **6.1**       This Court shall retain jurisdiction of this matter to enforce, modify, or  
4 terminate this Consent Judgment.

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

14       **7.       APPLICATION OF CONSENT JUDGMENT**

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

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

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

1           **8.2**     ERC, acting in the public interest, releases the Released Parties from any and all  
2 claims for violations of Proposition 65 up to, and including, the Compliance Date based on  
3 exposure to lead from the Covered Products as set forth in the Notice of Violation. ERC, on  
4 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all  
5 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
6 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
7 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
8 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
9 Products regarding lead up to, and including, the Compliance Date.

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

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

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

ERC on behalf of itself only, and Big Spoon Roasters on behalf of itself only, acknowledge

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

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

6       **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
7 environmental exposures arising under Proposition 65, nor shall it apply to any of Big Spoon  
8 Roasters' products other than the Covered Products.

9       **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13       **10. GOVERNING LAW**

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

16       **11. PROVISION OF NOTICE**

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

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

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

24       With a copy to:

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

**FOR BIG SPOON ROASTERS LLC:**

Mark Overbay  
Co-Founder & President  
Big Spoon Roasters  
500 Meadowlands Drive  
Hillsborough, NC 27278  
Email: mark@bigspoonroasters.com

With a copy to:  
Phillip L. Hinerman  
Christin Kim  
Fox Rothschild LLP  
345 California St, Ste 2200  
San Francisco, CA 94104  
Ph: (415) 364-5540  
Email: phinerman@foxrothschild.com; christinkim@foxrothschild.com

**12. COURT APPROVAL**

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

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

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

**13. EXECUTION AND COUNTERPARTS**

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

**14. DRAFTING**

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

1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
4 equally in the preparation and drafting of this Consent Judgment.

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

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

11 **16. ENFORCEMENT**

12 ERC or Big Spoon Roasters may, by motion or order to show cause before the Superior  
13 Court of Alameda County, enforce the terms and conditions contained in this Consent  
14 Judgment. In any action brought by ERC to enforce this Consent Judgment, ERC may seek  
15 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with  
16 the Consent Judgment.

17 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
18 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent  
19 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are  
20 provided by law for failure to comply with Proposition 65 or other laws.

21 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

28 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully

1 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

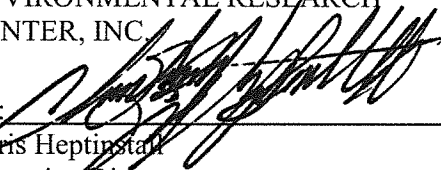
10 (2) Make the findings pursuant to California Health and Safety Code section  
11 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

14 **IT IS SO STIPULATED:**

15 Dated: 3/27/, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

17 By:   
18 Chris Heptinstall  
Executive Director

20 Dated: 03/27/25, 2025

BIG SPOON ROASTERS LLC

DocuSigned by:

22 

5DB207ADCEAB442

23 By: Mark Overbay

24 Its: Managing Member

25 ///

26 ///

27 ///

28 ///

1 **APPROVED AS TO FORM:**

2  
3 Dated: March 27, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

4  
5 By: 

6 Charles W. Poss  
7 In-House Counsel

8  
9 Dated: 03/26/25, 2025

FOX ROTHSCHILD LLP

10  
11 By:   
12 Philip L. Hinerman  
13 Attorney for Big Spoon Roasters LLC  
14  
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**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: Feb 11, 2025

  
\_\_\_\_\_  
Judge of the Superior Court

**Keith Fong / Judge**

# **EXHIBIT A**



## Environmental Research Center

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

December 18, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the 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 Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

**Big Spoon Roasters LLC**

**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. Big Spoon Roasters Lemon Blueberry Cashew Butter Bar - Lead**
- 2. Big Spoon Roasters Cranberry Cashew Peanut Butter Bar - Lead**

3. **Big Spoon Roasters Figgy Chai Peanut Butter Bar - Lead**
4. **Big Spoon Roasters Cherry Chocolate Peanut Butter Bar - Lead**
5. **Big Spoon Roasters Apple Ginger Almond Butter Bar - Lead**
6. **Big Spoon Roasters Apricot Pepita Peanut Butter Bar - 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 December 18, 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 Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

December 18, 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 Big Spoon Roasters LLC and its Registered Agent for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Big Spoon Roasters LLC**

I, Charles Poss, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party identified in the notices has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party, Environmental Research Center.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: December 18, 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 December 18, 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:

Mark Overbay, President  
or Current President or CEO  
Big Spoon Roasters LLC  
500 Meadowlands Dr  
Hillsborough, NC 27278

Mark Overbay  
(Registered Agent for Big Spoon  
Roasters LLC)  
500 Meadowlands Dr  
Hillsborough, NC 27278

On December 18, 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 December 18, 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:

Royl Roberts, Interim District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

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

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

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

December 18, 2024

Page 6

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

Mark Ankcom, 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



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

December 18, 2024

Page 7

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, 4<sup>th</sup> 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, 16<sup>th</sup> 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

Carla Rodriguez, District Attorney  
Sonoma County  
600 Administration Dr, Rm 212  
Santa Rosa CA 95403  
ECLD@sonoma-county.org

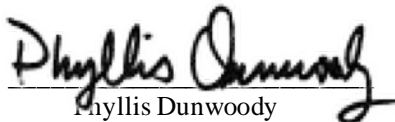
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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 December 18, 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 December 18, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

December 18, 2024

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**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
17300 Hwy 89  
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 6<sup>th</sup> 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 4<sup>th</sup> 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  
300 South G Street, Ste 300  
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 Bernardino, 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, 2<sup>nd</sup>  
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 2<sup>nd</sup> 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.<sup>1</sup> 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

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<sup>1</sup> 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](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 contaminant<sup>2</sup> 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.

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<sup>2</sup> 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](mailto: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.