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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER, INC., a California non-profit corporation **Plaintiff,** **vs.** **MEND NUTRITION INC. and DOES 1-100** **Defendants.**	**CASE NO. 25CV133998** **~~[PROPOSED]~~ STIPULATED CONSENT JUDGMENT** Health & Safety Code § 25249.5 *et seq.* Action Filed: July 28, 2025 Trial Date: None set

1. INTRODUCTION

1.1 On July 28, 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 Mend Nutrition Inc. ("Mend Nutrition") and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by Mend

Nutrition contain lead or mercury, chemicals listed under Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a "Covered Product" or collectively as "Covered Products") are: (1) Mend Regenerate Vanilla Malt (lead), (2) Mend Regenerate Dark Chocolate (lead), and (3) Mend Daily Repair & Recover Citrus (mercury).

The Covered Products called "Mend Regenerate Vanilla Malt" and "Mend Regenerate Dark Chocolate" may also be referred to as "Lead Covered Product(s)," and the Covered Product called "Mend Daily Repair & Recover Citrus" may also be referred to as "Mercury Covered Product."

1.2 ERC and Mend Nutrition are hereinafter referred to individually as a "Party" or collectively as the "Parties."

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

1.4 For purposes of this Proposed Stipulated Consent Judgment ("Consent Judgment"), Mend Nutrition does not dispute that it is a business entity that has employed ten or more persons at all times relevant to this action, and qualifies as a "person in the course of doing business" within the meaning of Proposition 65. Mend Nutrition manufactures, distributes, and/or sells the Covered Products.

1.5 The Complaint is based on allegations contained in ERC's Notice of Violation dated April 11, 2025, that was served on the California Attorney General, other public enforcers, and Mend Nutrition ("Notice"). A true and correct copy of the 60-Day Notice dated April 11, 2025 is attached hereto as **Exhibit A** is incorporated herein by reference. More than 60 days have passed since the Notice was served on the Attorney General, public enforcers, and Mend Nutrition and no designated governmental entity has filed a Complaint against Mend Nutrition with regard to the Covered Products or the alleged violations.

1.6 ERC's Notice and Complaint allege that use of the Covered Products by

California consumers exposes them to lead or mercury without first receiving clear and reasonable warnings from Mend Nutrition, which is in violation of California Health and Safety Code section 25249.6.

1.7 Mend Nutrition denies all material allegations contained in the Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Mend Nutrition of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Mend Nutrition of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mend Nutrition. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Consent Judgment.

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

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

1.10 The Effective Date of this Consent Judgment is the date on which Notice is served that this Consent Judgment is entered as a Judgment by this Court. The Compliance Date is the date that is 60 days after the Effective Date.

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment and any further court action that may become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction

over Mend Nutrition as to the acts alleged in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through and including the Compliance Date that were or could have been asserted in this action based on the facts alleged in the Notice and Complaint.

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning on the Compliance Date, Mend Nutrition shall be permanently 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 Lead Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or any Mercury Covered Product that exposes a person to a "Daily Mercury Exposure Level" of more than 0.3 micrograms of mercury per day, all pursuant to the testing methodologies and level of quantification set forth in Section 3, 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 Mend Nutrition 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, excluding, pursuant to Section 3.1.4, the amount of lead in the ingredients listed in **Table 1** below, if applicable. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.1.3 For purposes of this Consent Judgment, the "Daily Mercury Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula:

micrograms of mercury 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 mercury exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.1.4 In calculating the Daily Lead Exposure Level for a Lead Covered Product, Mend Nutrition shall be allowed to deduct the amount of lead which is deemed "naturally occurring" in the ingredients listed in **Table 1** that are contained in that Lead Covered Product under the following conditions: For each year that Mend Nutrition claims entitlement to a "naturally occurring" allowance for lead, Mend Nutrition shall obtain and provide to ERC the following information: (a) a written list of each ingredient in the Lead Covered Product, and the amount, measured in grams, of each such ingredient contained therein, for which a "naturally occurring" allowance is claimed; (b) documentation of laboratory testing, conducted during the year for which the "naturally occurring" allowance is claimed, that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in each ingredient listed in **Table 1** that is contained in the Lead Covered Product and for which Mend Nutrition intends to deduct "naturally occurring" lead; (c) If the laboratory testing reveals the presence of lead in any of the ingredients listed in **Table 1** that are contained in the Lead Covered Product, Mend Nutrition shall be entitled to deduct the amount of lead contained in each ingredient, up to the full amount of the allowance for each ingredient as shown in **Table 1**, for those ingredients that are in the Lead Covered Product; and (d) If the Lead Covered Product does not contain any of the ingredients listed in **Table 1**, Mend Nutrition shall not be entitled to a deduction for "naturally occurring" lead in the Lead Covered Product for those ingredients. The information required by Sections 3.1.4(a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary thereof, for any year over the next three (3) years that Mend Nutrition shall claim entitlement to the "naturally occurring" allowance:

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TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa Powder	Up to 1.0 microgram/gram
Chocolate Liquor	Up to 1.0 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram

3.2 Clear and Reasonable Warnings

If Mend Nutrition is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized ("Warning"):

OPTION 1:

WARNING: Consuming this product can expose you to chemicals including [lead] [and] [mercury] which is [are] 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.

OR

OPTION 2:

WARNING: Risk of [cancer from exposure to [lead] [and] reproductive harm from exposure to [lead] [and] [mercury] See www.P65Warnings.ca.gov/food.

OR

OPTION 3:

WARNING: Can expose you to [[lead], a carcinogen and] [lead] [and] [mercury], a reproductive toxicant. See www.P65Warnings.ca.gov/food.

OR

OPTION 4:

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

The Warning shall begin either with the word "**WARNING,**" as indicated above, or the words "**CA WARNING**" or "**CALIFORNIA WARNING,**" in all capital letters and bold print. Mend Nutrition shall use the phrase "cancer and" in the Option 1 Warning or "cancer from exposure to [lead], and" in the Option 2 Warning or "[lead], a carcinogen and" in the Option 3 Warning (each referred to as a "Cancer Phrase") if the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Mend Nutrition has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there is lead, mercury, or multiple chemicals present in each of the Covered Products, but if there is a chemical present at a level that requires a cancer warning, at least one chemical requiring use of the Cancer Phrase in the Warning shall always be identified in any warning that requires the identification of a chemical by name.

The Option 4 Warning may only be used until January 1, 2028. Any Covered Product that is manufactured and labeled prior to January 1, 2028, may use the Option 4 Warning regardless of when the product is sold to a consumer. For the Option 4 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word "**WARNING**." Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which products on

the checkout page are subject to the Warning. A clearly marked hyperlink using the word "**WARNING**" or "**CA WARNING**" or "**CALIFORNIA WARNING**" in all capital and bold letters on the Covered Product's primary display page may be used, so long as the hyperlink goes directly to a page prominently displaying the warning without content that detracts from the Warning. A Warning is not prominently displayed if the purchaser has to search for it in the general content of the website.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and in no event less than six (6) point type. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

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

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

3.3 Conforming Covered Products

A Conforming Lead Covered Product is a Lead Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the exposure methodology set forth in Section 3.1.2 and the quality control methodology as described in Section 3.4, and that is not known by Mend Nutrition to contain other chemicals that violation Proposition 65's safe harbor thresholds. A Conforming Mercury Covered Product is a Mercury Covered Product for which the "Daily Mercury Exposure Level" is no greater than 0.3

micrograms of mercury per day as determined by the exposure methodology set forth in Section 3.1.2 and the quality control methodology described in Section 3.4, and that is not known by Mend Nutrition to contain other chemicals that violate Proposition 65's safe harbor thresholds.

3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, and subject to Section 3.4.7, below, Mend Nutrition shall arrange for lead and mercury testing of the Covered Products at least once a year for a minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Mend Nutrition intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of three (3) consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, Mend Nutrition changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, Mend Nutrition shall test that Covered Product annually for at least two (2) consecutive years after such change is made.

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

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

3.4.4 All testing pursuant to this Consent Judgment shall be performed by an independent third party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the

United States Food & Drug Administration.

3.4.5 Nothing in this Consent Judgment shall limit Mend Nutrition's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

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

3.4.7 The testing and reporting requirements of Section 3.4 do not apply to any Covered Product for which Mend Nutrition has provided the Warning specified in Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event Mend Nutrition ceases to provide the Warning specified in Section 3.2 for any Covered Product, Mend Nutrition may only do so after it has tested such Covered Product, and Mend Nutrition shall be required to comply with the testing requirements of this section beginning immediately after the date the Warning ceases to be provided, unless Mend Nutrition can show to the satisfaction of ERC that the cessation in providing the Warning was a temporary error that was resolved when discovered.

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

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, Mend Nutrition shall make a total payment of $32,000.00 ("Total Settlement Amount") to ERC in three periodic payments (the "Periodic Payments") according to the following payment schedule ("Due Dates"):

- Payment 1 -- $10,666.67 within 10 Court days of the Effective Date (the first Due Date). Court days shall be based on the Alameda County Superior Court Holidays

listed at https://www.alameda.courts.ca.gov/general-information/holidays.

- Payment 2 -- $10,666.67 within 35 days of the Effective Date (the second Due Date).
- Payment 3 -- $10,666.66 within 65 days of the Effective Date (the third Due Date).

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

4.2 $2,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% ($1,500.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% ($500.00) of the civil penalty.

4.3 $2,979.68 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 $27,020.32 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

4.5 In the event that Mend Nutrition fails to remit, in full, any of the Periodic Payments owed under Section 4.1 of this Consent Judgment on or before the applicable Due Date, Mend Nutrition shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide written notice of the delinquency to Mend Nutrition via electronic mail. If Mend Nutrition fails to deliver the delinquent payment(s) within five (5) days from the written notice, the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010, and Mend Nutrition shall forfeit any release provisions in Section 8 that are for the benefit of Mend Nutrition and the Released Parties (as defined in Section 8.1) until such time as the Total Settlement Amount is paid in full. Additionally, Mend Nutrition agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under

this Consent Judgment.

5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified only as to injunctive terms (i) by written stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to Section 5.3, , and based upon an agreement to modify the Consent Judgment, and upon entry by the Court of a modified consent judgment.

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

5.3 In the event that any Party initiates or otherwise requests a modification under Section 5.1, and the meet and confer process leads to an agreed upon motion or stipulation for a modification of the Consent Judgment, the Party that initiated or requested the modification shall reimburse the other Party its costs and reasonable attorney's fees for the time spent in the meet-and-confer process and filing and arguing the motion or application.

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this Consent Judgment, and any alleged breach of the terms of this Consent Judgment must be brought in the Alameda County Superior Court.

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

7. APPLICATION OF CONSENT JUDGMENT

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

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

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

8.2 ERC, acting in the public interest, releases the Released Parties from any and all claims for violations of Proposition 65 up to and including the Compliance Date based on exposure to lead or mercury from the Covered Products as set forth in the Notice of Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released

Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead or mercury up to and including the Compliance Date.

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

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

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

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

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

constitute compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to lead or mercury in the Covered Products as set forth in the Notices and Complaint.

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

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

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

With a copy to:

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

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FOR MEND NUTRITION INC.:

Chris Gusty
Mend Nutrition Inc.
44-79 21st Street #3144
Long Island City, NY 11101
Email: chris@mend.me

With a copy to:

Lauren M. Michals
Nixon Peabody LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111
Ph: (415) 984-8261
Email: lmichals@nixonpeabody.com

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice and file a Motion for Court Approval and provide all notices and notifications required under Proposition 65 and its regulations. Mend Nutrition will not oppose entry of this Consent Judgment.

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

12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be 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, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

16. ENFORCEMENT

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

17. ENTIRE AGREEMENT, AUTHORIZATION

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

herein, shall be deemed to exist or to bind any Party.

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

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

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

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

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

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

IT IS SO STIPULATED:

Dated: 10/27, 2025

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: 10/24/2025, 2025

MEND NUTRITION INC.

Signed by:
Paul Roscoe
04BA861EEB0946D...

By: Paul Roscoe
Its: CEO

///

///

///

APPROVED AS TO FORM:

Dated: October 27, 2025

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Charles Poss
In- House Counsel

Dated: October 24, 2025

NIXON PEABODY LLP

By: _____
Lauren M. Michals
Attorney for Defendant Mend Nutrition Inc.

~~[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: 12/23/2025, 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

April 11, 2025

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:

Mend Nutrition 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. **Mend Regenerate Vanilla Malt - Lead**
2. **Mend Regenerate Dark Chocolate - Lead**

3. Mend Daily Repair & Recover Citrus - Mercury

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.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female 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.

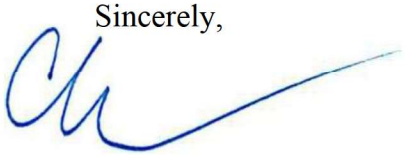
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 11, 2022, as well as every day since the products were introduced into the California marketplace and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

I, Charles Poss, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have 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 chemicals that are 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: April 11, 2025

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 April 11, 2025, 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:

Eziah Syed, Chief Executive Officer
or Current President or CEO
Mend Nutrition Inc.
180 Varick St, Fl 6
New York, NY 10014

The Corporation
(Registered Agent for Mend Nutrition Inc.)
8 The Green, Ste A
Dover, DE 19901

Corporation Service Company
(Registered Agent for Mend Nutrition Inc.)
1209 N. Orange Street
Wilmington, DE 19801

On April 11, 2025, 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 April 11, 2025, 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

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

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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
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San Rafael, CA 94903
consumer@marincounty.org

Walter W. Wall, District Attorney
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Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
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1200 Aguajito Road
Monterey, CA 93940
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Allison Haley, District Attorney
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CEPD@countyofnapa.org

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

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Santa Ana, CA 92703
Prop65notice@ocdapa.org

Morgan Briggs Gire, District Attorney
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Roseville, CA 95678
Prop65@placer.ca.gov

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

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

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

Summer Stephan, District Attorney
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
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350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Henry Lifton, Deputy City Attorney
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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

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

Eric J. Dobroth, Deputy District Attorney
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San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

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

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

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

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

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

On April 11, 2025, 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.

Exccutcd on April 11, 2025, in Fort Oglcthorpc, Gcorgia.

Phyllis Dunwoody

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 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
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 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 contaminant[2] 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.