

FILED
Superior Court of California
County of Alameda
05/27/2026
Clad Flake, Executive Officer / Clerk of the Court
By: D. Kinney Deputy
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15 Black Girl Vitamins and BG Health LLC

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

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

21 **Plaintiff,**

22 **vs.**

23 **MAXWELL NUTRITION LLC,**
24 **individually and dba BLACK GIRL**
25 **VITAMINS; BG HEALTH LLC; and**
26 **DOES 1-100**

27 **Defendants.**

28 **CASE NO. 25CV145698**

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

Health & Safety Code § 25249.5 *et seq.*

Action Filed:

Trial Date: None set

1. INTRODUCTION

1.1 On September 29, 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

1 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5
2 *et seq.* (“Proposition 65”), against Maxwell Nutrition LLC, individually and dba Black Girl
3 Vitamins, and BG Health LLC (collectively “Black Girl Vitamins”) and Does 1-100. In this
4 action, ERC alleges that “Covered Products” defined herein manufactured, distributed, or sold
5 by Black Girl Vitamins contain lead, a chemical listed under Proposition 65 as a carcinogen
6 and reproductive toxin, and expose consumers to this chemical at a level requiring a
7 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
8 Product” or collectively as “Covered Products”) are: (1) “Black Girl Vitamins Meno-Chill”
9 dietary supplement containing ashwagandha, black cohosh & probiotics, and (2) “Black Girl
10 Vitamins in the mood” dietary supplement. Black Girl Vitamins denies all allegations of
11 wrongdoing, and agrees to this Consent Judgment (as defined below) solely to avoid incurring
12 expenses and spending time defending the allegations in the Complaint.

13 **1.2** ERC and Black Girl Vitamins may also hereinafter be referred to individually as
14 a “Party” or collectively as the “Parties.”

15 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
16 causes, helping safeguard the public from health hazards by reducing the use and misuse of
17 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
18 and encouraging corporate responsibility. For purposes of this Proposed Stipulated Consent
19 Judgment (“Consent Judgment”) only, Maxwell Nutrition LLC and BG Health LLC do not dispute
20 the foregoing or any other assertion made about ERC set forth in this Consent Judgment.

21 **1.4** For purposes of this Consent Judgment only, Maxwell Nutrition LLC and BG
22 Health LLC will not dispute that each is a “person in the course of doing business” within the
23 meaning of Proposition 65.

24 **1.5** Black Girl Vitamins manufactures, distributes, and/or sells the Covered Products.

25 **1.6** The Complaint is based on allegations contained in ERC’s Notice of Violation
26 dated July 17, 2025, that was served on the California Attorney General, other public
27 enforcers, and Black Girl Vitamins (“Notice”). A true and correct copy of the 60-Day Notice
28 dated July 17, 2025, is attached hereto as **Exhibit A**, and is incorporated herein by reference.

1 More than 60 days have passed since the Notice was served on the Attorney General, public
2 enforcers, and Black Girl Vitamins and no designated governmental entity has filed a
3 complaint against Black Girl Vitamins with regard to the Covered Products or the alleged
4 violations.

5 **1.7** ERC's Notice and Complaint allege that use of the Covered Products by
6 California consumers exposes them to lead without first receiving clear and reasonable
7 warnings from Black Girl Vitamins, which is in violation of California Health and Safety Code
8 section 25249.6. Black Girl Vitamins denies all allegations of wrongdoing contained in the
9 Notice and Complaint.

10 **1.8** The Parties have entered into this Consent Judgment solely to settle,
11 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
12 Nothing in this Consent Judgment or compliance with this Consent Judgment shall constitute
13 or be construed as an admission by any of the Parties or by any of their respective officers,
14 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
15 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
16 issue of law, or violation of law.

17 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
19 any current or future legal proceeding unrelated to these proceedings.

20 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
21 as a Judgment by this Court. The Compliance Date of this Consent Judgment is the date that is
22 the later of: (a) forty-five (45) days after the Effective Date, or (b) April 15, 2026.

23 **2. JURISDICTION AND VENUE**

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

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

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

4 **3.1** Beginning on the Compliance Date, Black Girl Vitamins shall be permanently
5 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
6 California,” or directly selling in the State of California, any Covered Product that exposes a
7 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it
8 meets the warning requirements under Section 3.2 or is exempted by Section 3.6.

9 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
10 of California” shall mean to directly ship a Covered Product into California for sale in
11 California or to sell a Covered Product to a distributor that Black Girl Vitamins knows will sell
12 the Covered Product in California.

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

20 **3.2 Clear and Reasonable Warnings**

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

23 **OPTION 1:**

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

27 OR

28 ///

1 **OPTION 2:**

2 **WARNING:** Risk of cancer and reproductive harm from exposure to lead. See
3 www.P65Warnings.ca.gov/food.

4 OR

5 **OPTION 3:**

6 **WARNING:** Can expose you to lead, a carcinogen and reproductive toxicant.
7 www.P65Warnings.ca.gov/food.

8
9 For all Warning options, the Warning shall begin either with the word “**WARNING,**” as
10 indicated above, or the words “**CA WARNING**” or “**CALIFORNIA WARNING,**” in all capital
11 letters and bold print. Black Girl Vitamins shall use the phrase “cancer and” in the Option 1 and
12 Option 2 Warnings, and the phrase “carcinogen and” in the Option 3 Warning, if Black Girl
13 Vitamins has reason to believe that the “Daily Lead Exposure Level” is greater than 15
14 micrograms of lead as determined pursuant to the quality control methodology set forth in Section
15 3.4 or if Black Girl Vitamins has reason to believe that another Proposition 65 chemical is present
16 at a level requiring a cancer warning. If there is a chemical present at a level that requires a cancer
17 warning, the chemical requiring use of the phrase “cancer and” or the phrase “carcinogen and” in
18 the Warning shall always be identified.

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

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 and in no event less than six (6) point type.
28 No statements intended to or likely to have the effect of diminishing the impact of the Warning on

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

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

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

13 **3.3 Conforming Covered Products**

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

19 **3.4 Testing and Quality Control Methodology**

20 **3.4.1** Beginning within one year of the Effective Date, and unless Section
21 3.4.7 applies, Black Girl Vitamins shall arrange for lead testing of any Covered Product at least
22 once a year for a minimum of five consecutive years by arranging for testing of three (3)
23 randomly selected samples of each of the Covered Products, in the form intended for sale to
24 the end-user, which Black Girl Vitamins intends to sell or is manufacturing for sale in
25 California, directly selling to a consumer in California or “Distributing into the State of
26 California.” If tests conducted pursuant to this Section demonstrate that no Warning is required
27 for a Covered Product during each of five consecutive years, then the testing requirements of
28 this Section will no longer be required as to that Covered Product. However, if during or after

1 the five-year testing period, Black Girl Vitamins changes ingredient suppliers for any of the
2 Covered Products and/or reformulates any of the Covered Products, Black Girl Vitamins shall
3 test that Covered Product annually for at least four (4) consecutive years after such change is
4 made.

5 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
6 lead detection result of the three (3) randomly selected samples of the Covered Products will
7 be controlling.

8 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
9 laboratory method that complies with the performance and quality control factors appropriate
10 for the method used, including limit of detection and limit of quantification, sensitivity,
11 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
12 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
13 mg/kg.

14 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
15 independent third party laboratory certified by the State of California or accredited by the State
16 of California, a federal agency, the National Environmental Laboratory Accreditation Program
17 or similar nationally recognized accrediting organization to perform the particular method of
18 detection and analysis in question.

19 **3.4.5** Nothing in this Consent Judgment shall limit Black Girl Vitamins’
20 ability to conduct, or require that others conduct, additional testing of the Covered Products,
21 including the raw materials used in their manufacture.

22 **3.4.6** Within thirty (30) days of ERC’s written request, Black Girl Vitamins
23 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Black Girl Vitamins shall
24 retain all test results and documentation for a period of five years from the date of each test.

25 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
26 any Covered Product for which Black Girl Vitamins has provided the Warning specified in
27 Section 3.2 continuously and uninterrupted after the Compliance Date; however, in the event
28 Black Girl Vitamins ceases to provide the Warning specified in Section 3.2 for any Covered

1 Product, Black Girl Vitamins may only do so after it has tested such Covered Product, and
2 Black Girl Vitamins shall be required to comply with the testing requirements of this section
3 beginning immediately after the date the Warning ceases to be provided, unless Black Girl
4 Vitamins can show to the satisfaction of ERC that the cessation in providing the Warning was
5 a temporary error that was resolved when discovered.

6 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
7 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
8 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent
9 Judgment is intended by either party to set a precedent for the level of lead or other chemicals
10 that is permissible in consumer products under Proposition 65.

11 **3.6** Nothing in this Consent Judgment shall require Black Girl Vitamins to change
12 any Covered Products, contents of any Covered Products, labeling of any Covered Products,
13 packaging of any Covered Products, in-store tags of any Covered Products, or signage or visual
14 merchandising for any Covered Products existing as of the Compliance Date; however, Covered
15 Products that are in the possession of or under the control of Black Girl Vitamins as of the
16 Compliance Date must comply with the warning requirements of Sections 3.1 and 3.2 of this
17 Consent Judgment if such Covered Products are distributed or sold to California consumers after
18 the Compliance Date, but only if the Covered Products expose a person to a “Daily Lead
19 Exposure Level” of more than 0.5 micrograms of lead per day.

20 **4. SETTLEMENT PAYMENT**

21 **4.1** In full satisfaction of all potential civil penalties, additional settlement
22 payments, attorney’s fees, and costs, Black Girl Vitamins shall make a total payment of
23 \$40,000.00 (“Total Settlement Amount”) to ERC within ten (10) days of the Effective Date
24 (“Due Date”). Black Girl Vitamins shall make this payment by wire transfer to ERC’s account,
25 for which ERC will give Black Girl Vitamins the necessary account information. The Total
26 Settlement Amount shall be apportioned as follows:

27 **4.2** \$9,000.00 shall be considered a civil penalty pursuant to California Health and
28 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,750.00) of the civil penalty to the

1 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
2 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
3 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,250.00) of the civil penalty.

4 **4.3** \$2,516.29 shall be distributed to ERC as reimbursement to ERC for reasonable
5 costs incurred in bringing this action.

6 **4.4** \$6,454.24 shall be distributed to ERC as an Additional Settlement Payment
7 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to
8 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities
9 that address the same public harm as allegedly caused by Defendants in this matter. These
10 activities are detailed below and support ERC’s overarching goal of reducing and/or
11 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s
12 activities have had, and will continue to have, a direct and primary effect within the State of
13 California because California consumers will be benefitted by the reduction and/or elimination
14 of exposure to lead in dietary supplements and/or by providing clear and reasonable warnings
15 to California consumers prior to ingestion of the products.

16 Based on a review of past years’ actual budgets, ERC is providing the following list of
17 activities ERC engages in to protect California consumers through Proposition 65 citizen
18 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
19 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing
20 dietary supplement products that may contain lead and are sold to California consumers. This
21 work includes continued monitoring and enforcement of past consent judgments and
22 settlements to ensure companies are in compliance with their obligations thereunder, with a
23 specific focus on those judgments and settlements concerning lead. This work also includes
24 investigation of new companies that ERC does not obtain any recovery through settlement or
25 judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (up to 10-20%): maintaining
26 ERC’s Voluntary Compliance Program by acquiring products from companies, developing and
27 maintaining a case file, testing products from these companies, providing the test results and
28 supporting documentation to the companies, and offering guidance in warning or implementing

1 a self-testing program for lead in dietary supplement products; and (3) “GOT LEAD”
2 PROGRAM (up to 5%): maintaining ERC’s “Got Lead?” Program which reduces the numbers
3 of contaminated products that reach California consumers by providing access to free testing
4 for lead in dietary supplement products (Products submitted to the program are screened for
5 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
6 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
7 that submitted the product).

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

13 **4.5** \$22,029.47 shall be distributed to ERC for its in-house legal fees. Except as
14 explicitly provided herein, each Party shall bear its own fees and costs.

15 **4.6** In the event that Black Girl Vitamins fails to remit the Total Settlement Amount
16 owed under Section 4 of this Consent Judgment on or before the Due Date, Black Girl
17 Vitamins shall be deemed to be in material breach of its obligations under this Consent
18 Judgment. ERC shall provide written notice of the delinquency to Black Girl Vitamins via
19 electronic mail. If Black Girl Vitamins fails to deliver the Total Settlement Amount within
20 five (5) business days from the written notice, the Total Settlement Amount shall accrue
21 interest at the statutory judgment interest rate provided in the California Code of Civil
22 Procedure section 685.010, and Black Girl Vitamins shall forfeit any release provisions in
23 Section 8 that are for the benefit of Black Girl Vitamins and the Released Parties (as defined in
24 Section 8.1) until such time as the Total Settlement Amount is paid in full. Additionally, Black
25 Girl Vitamins agrees to pay ERC’s reasonable attorney’s fees and costs for any efforts to
26 collect the payment due under this Consent Judgment.

27 **5. MODIFICATION OF CONSENT JUDGMENT**

28 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by

1 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
2 or (ii) by motion of either Party pursuant to Section 5.3, and based upon an agreement to
3 modify the Consent Judgment, and upon entry by the Court of a modified consent judgment.

4 **5.2** If Black Girl Vitamins seeks to modify this Consent Judgment under Section
5 5.1, then Black Girl Vitamins must provide written notice to ERC of its intent (“Notice of
6 Intent”). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
7 Intent, then ERC must provide written notice to Black Girl Vitamins within thirty (30) days of
8 receiving the Notice of Intent. If ERC notifies Black Girl Vitamins in a timely manner of
9 ERC’s intent to meet and confer, then the Parties shall meet and confer in good faith as
10 required in this Section. The Parties shall meet in person, via remote meeting, or by telephone
11 within thirty (30) days of ERC’s notification of its intent to meet and confer. Within thirty (30)
12 days of such meeting, if ERC disputes the proposed modification, ERC shall provide to Black
13 Girl Vitamins a written basis for its position. The Parties shall continue to meet and confer for
14 an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
15 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
16 period.

17 **5.3** In the event that Black Girl Vitamins initiates or otherwise requests a
18 modification under Section 5.1, and the meet and confer process leads to an agreed upon
19 motion or stipulation for a modification of the Consent Judgment, Black Girl Vitamins shall
20 reimburse ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-
21 confer process and filing and arguing the motion or application.

22 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
23 **JUDGMENT**

24 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
25 terminate this Consent Judgment.

26 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
27 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
28 inform Black Girl Vitamins in a reasonably prompt manner of its test results, including

1 information sufficient to permit Black Girl Vitamins to identify the Covered Products at issue.
2 Black Girl Vitamins shall, within thirty (30) days following such notice, provide ERC with
3 testing information, from an independent third-party laboratory meeting the requirements of
4 Sections 3.4.3 and 3.4.4, demonstrating Black Girl Vitamins' compliance with the Consent
5 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
6 legal action.

7 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

15 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
16 behalf of itself and in the public interest, and Black Girl Vitamins and its respective officers,
17 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
18 franchisees, licensees, customers (not including private label customers of Black Girl
19 Vitamins), distributors, wholesalers, retailers, and all other upstream and downstream entities
20 in the distribution chain of any Covered Product, and the predecessors, successors, and assigns
21 of any of them (collectively, "Released Parties").

22 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
23 claims for violations of Proposition 65 up to and including the Compliance Date based on
24 exposure to lead from the Covered Products as set forth in the Notice of Violation. ERC, on
25 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
26 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
27 expenses asserted, or that could have been asserted from the handling, use, or consumption of
28 the Covered Products, as to any alleged violation of Proposition 65 or its implementing

1 regulations arising from the failure to provide Proposition 65 warnings on the Covered
2 Products regarding lead up to and including the Compliance Date.

3 **8.3** ERC on its own behalf only, and Black Girl Vitamins on its own behalf only,
4 further waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of
6 Proposition 65 in connection with the Notice and Complaint up to and including the
7 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
8 right to seek to enforce the terms of this Consent Judgment.

9 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
10 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
11 discovered. ERC on behalf of itself only, and Black Girl Vitamins on behalf of itself only,
12 acknowledge that this Consent Judgment is expressly intended to cover and include all such
13 claims up to and including the Compliance Date, including all rights of action therefor. ERC
14 and Black Girl Vitamins acknowledge that the claims released in Sections 8.2 and 8.3 above
15 may include unknown claims and nevertheless waive California Civil Code section 1542 as to
16 any such unknown claims. California Civil Code section 1542 reads as follows:

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

21 ERC on behalf of itself only, and Black Girl Vitamins on behalf of itself only, acknowledge
22 and understand the significance and consequences of this specific waiver of California Civil
23 Code section 1542.

24 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
25 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
26 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

27 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
28 environmental exposures arising under Proposition 65, nor shall it apply to any of Black Girl

1 Vitamins' products other than the Covered Products.

2 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

6 **10. GOVERNING LAW**

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

9 **11. PROVISION OF NOTICE**

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

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

14 Chris Heptinstall, Executive Director, Environmental Research Center
15 3111 Camino Del Rio North, Suite 400
16 San Diego, CA 92108
17 Ph: (619) 500-3090
18 Email: chris.heptinstall@erc501c3.org

19 With a copy to:

20 Charles W. Poss
21 Environmental Research Center, Inc.
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
24 Ph: (619) 500-3090
25 Email: charles.poss@erc501c3.org

26 **FOR MAXWELL NUTRITION LLC, individually and
27 dba BLACK GIRL VITAMINS; BG HEALTH LLC:**

28 Name: Nnamdi Ugwu, Maxwell Nutrition, LLC
Address: 233 S. Wacker Drive, Suite 4400 #39
Address: Chicago, IL 60606
Email: nnamdi@blackgirlvitamins.co

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1 With a copy to:
2 Ari N. Rothman, Esq.
3 Venable LLP
4 2049 Century Park East, Suite 3400
5 Los Angeles, CA 90067
6 Ph: (310) 229-9909
7 Email: ANRothman@Venable.com

8 **12. COURT APPROVAL**

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

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

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

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

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

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

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

7 **16. ENFORCEMENT**

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

16 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

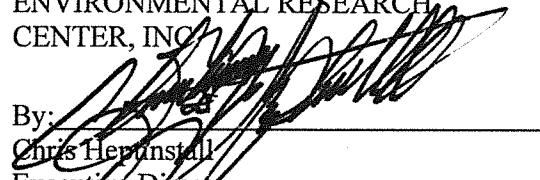
5 (2) Make the findings pursuant to California Health and Safety Code section
6 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

9 **IT IS SO STIPULATED:**


10 Dated: 12/29/, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC

11
12 By: 
13 Chris Herpin
Executive Director


14 Dated: December 29th, 2025

MAXWELL NUTRITION LLC,
individually and dba BLACK GIRL
VITAMINS

15
16
17 
18
19 By: Nnamdi Ugwu
Its: CEO

20 Dated: December 29th, 2025

BG HEALTH LLC

21
22 
23
24 By: Nnamdi Ugwu
Its: CEO

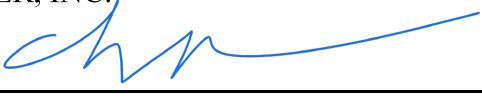
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APPROVED AS TO FORM:

Dated: December 29, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 

Charles W. Poss
In-House Counsel

Dated: December 29, 2025

VENABLE LLP

By: 


Ari N. Rothman
Attorney for Maxwell Nutrition LLC,
individually and dba Black Girl Vitamins
and BG Health LLC

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: 05/27/2026, 2026



Judge of the Superior Court

Karin Schwartz / Judge

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EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

July 17, 2025

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

**Maxwell Nutrition LLC, individually and dba Black Girl Vitamins
BG Health 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. **Black Girl Vitamins Meno-Chill Dietary Supplement Contains Ashwagandha, Black Cohosh & Probiotics - Lead**
2. **Black Girl Vitamins In The Mood Dietary Supplement Support your desire - 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 July 17, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

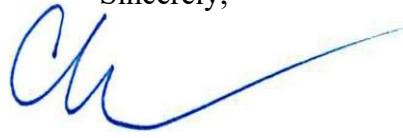
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the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

July 17, 2025

Page 3

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 Maxwell Nutrition LLC, individually and dba Black Girl Vitamins, BG Health LLC, and their 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 Maxwell Nutrition LLC, individually and dba Black Girl Vitamins and BG Health LLC

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 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 violators 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: July 17, 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 July 17, 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:

Maxine Ugwu, Co-Founder
or Current President or CEO
Maxwell Nutrition LLC, individually
and dba Black Girl Vitamins
601 West Harrison St, Unit 250
Chicago, IL 60607

Maxine Ugwu, Co-Founder
or Current President or CEO
Maxwell Nutrition LLC, individually
and dba Black Girl Vitamins
1135 S Delano Court E, Unit 502
Chicago, IL 60605

Maxine Ugwu, Co-Founder
or Current President or CEO
Maxwell Nutrition LLC, individually
and dba Black Girl Vitamins
6776 Southwest Freeway
Houston, TX 77074

United States Corporation Agents, Inc.
(Registered Agent for BG Health LLC)
500 N Michigan Ave, Ste 536
Chicago, IL 60611

Nnamdi Ugwu, Manager
or Current President or CEO
BG Health LLC
1135 S Delano Court E, Unit 502
Chicago, IL 60605

Harvard Business Services Inc.
(Registered Agent for Maxwell Nutrition LLC,
individually and dba Black Girl Vitamins)
16192 Coastal Hwy
Lewes, DE 19958

On July 17, 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 July 17, 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:

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

July 17, 2025

Page 6

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

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Prop65Env@co.calaveras.ca.us

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Martinez, CA 94553
sgrassini@contracostada.org

James Clinchard, Assistant District Attorney
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Placerville, CA 95667
EDCDAPROP65@edcda.us

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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Devin Chandler, Program Coordinator
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Susanville, CA 96130
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DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney
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Santa Ana, CA 92703
Prop65notice@ocdapa.org

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

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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

July 17, 2025

Page 7

Summer Stephan, District Attorney
San Diego County
330 West Broadway
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SanDiegoDAProp65@sdcda.org

Bud Porter, Supervising Deputy District Attorney
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San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

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350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Jeffrey S. Rosell, District Attorney
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Prop65DA@santacruzcounty.us

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San Francisco, CA 94102
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Carla Rodriguez, District Attorney
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600 Administration Dr, Rm 212
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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Phillip J. Cline, District Attorney
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Visalia, CA 95370
Prop65@co.tulare.ca.us

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

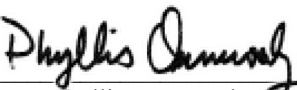
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On July 17, 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.

Executed on July 17, 2025, in Fort Oglethorpe, Georgia.



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 contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.