

1 Anne Barker SBN 253824
Environmental Research Center, Inc.
2 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
3 Telephone: (619) 500-3090
Facsimile: (706) 858-0326
4

5 Michael Freund SBN 99687
Ryan Hoffman SBN 283297
Michael Freund & Associates
6 1919 Addison Street, Suite 105
Berkeley, CA 94704
7 Telephone: (510) 540-1992
Facsimile: (510) 540-5543
8

9 Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

10 Carlos Lopez
The Vitamin Shoppe
11 300 Harmon Meadow Blvd
Secaucus, NJ 07094
12

13 Attorney for Defendants
VITAMIN SHOPPE, INC., VITAMIN SHOPPE
14 INDUSTRIES, INC.

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

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

19 **Plaintiff,**

20 **vs.**

21 **VITAMIN SHOPPE, INC., VITAMIN**
22 **SHOPPE INDUSTRIES, INC., and DOES**
1-100

23 **Defendants.**
24
25

CASE NO. RG15791206

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 28, 2015
Trial Date: None set

26 **1. INTRODUCTION**

27 **1.1** On October 28, 2015, Plaintiff Environmental Research Center, Inc. (“ERC”), a
28 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 (“Proposition 65”), against Vitamin Shoppe, Inc., Vitamin Shoppe Industries, Inc., and Does 1-
4 100 (collectively “Vitamin Shoppe”). In this action, ERC alleges that certain products sold by
5 Vitamin Shoppe contain lead at a level requiring a Proposition 65 warning. These products
6 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
7 Products”) are: “The Ultimate Life The Ultimate Meal Vegan Intro-Size” and “The Ultimate
8 Life The Ultimate Meal Vegan Eco-Size.”

9 **1.2** ERC and Vitamin Shoppe are hereinafter referred to individually as a “Party” or
10 collectively as the “Parties.”

11 **1.3** ERC is a California non-profit corporation.

12 **1.4** For purposes of this Consent Judgment, the Parties agree that Vitamin Shoppe is a
13 business entity that has employed ten or more persons at all times relevant to this action, and
14 qualifies as a “person in the course of business” within the meaning of Proposition 65. Vitamin
15 Shoppe distributes and sells the Covered Products.

16 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
17 dated June 18, 2015, that was served on the California Attorney General, other public
18 enforcers, and Vitamin Shoppe (“Notice”). A true and correct copy of the Notice is attached as
19 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
20 Notice was mailed and uploaded to the Attorney General’s website, and no designated
21 governmental entity has filed a complaint against Vitamin Shoppe with regard to the Covered
22 Products or the alleged violations.

23 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
24 persons in California to lead without first providing clear and reasonable warnings in violation
25 of California Health and Safety Code section 25249.6. Vitamin Shoppe denies all material
26 allegations contained in the Notice and Complaint.

27 **1.7** The Parties have entered into this Consent Judgment in order to settle,
28 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
2 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
3 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
4 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
5 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
6 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
7 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
8 purpose.

9 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
11 other or future legal proceeding unrelated to these proceedings.

12 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
13 a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

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

22 **3. INJUNCTIVE RELIEF**

23 **3.1** Beginning on the Effective Date, Vitamin Shoppe shall be permanently enjoined
24 from “Distributing into the State of California”, or directly selling in the State of California,
25 any Covered Product which exposes a person to a “Daily Lead Exposure Level” of more than
26 0.5 micrograms per day of lead when the maximum suggested dose is taken as directed on the
27 Covered Product’s label, unless it meets the warning requirements under Section 3.2.
28

1 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that Vitamin Shoppe knows will sell the
4 Covered Product in California.

5 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
6 Level” shall be measured in micrograms, and shall be calculated using the following formula:
7 micrograms of lead per gram of product, multiplied by grams of product per serving of the
8 product (using the largest serving size appearing on the product label), multiplied by servings
9 of the product per day (using the largest number of servings in a recommended dosage
10 appearing on the product label), which equals micrograms of lead exposure per day.

11 **3.2 Clear and Reasonable Warnings**

12 If Vitamin Shoppe is required to provide a warning pursuant to Section 3.1, the following
13 warning (“Warning”) must be utilized:

14 **WARNING California Proposition 65:** This product contains lead, a chemical known to
15 the state of California to cause cancer and birth defects or other reproductive harm.

16 (a) For sales in retail stores, the Warning may be provided by either of the following
17 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and
18 Reasonable Warnings in Retail Stores, below:

19 (1) Identifying Signs and Designated Symbol in Retail Stores. In retail stores,
20 the Warning may be provided through the use of a system that combines both a designated symbol
21 and an identifying sign that explains the meaning of the designated symbol. The designated
22 symbol (“Symbol”) shall be either:

23 Symbol #1: The Symbol shown on Exhibit B, which shall appear as shown on
24 Exhibit B, with black “Prop 65” and “!” text, black border, and yellow background,
25 whenever it is displayed;

26 -or-

27 Symbol #2: The Symbol shown on Exhibit C, which shall appear as shown on
28 Exhibit C, with the words “Prop 65” placed above the word “Warning!”, whenever

1 it is displayed.

2 (A) Covered Products Displayed in Retail Stores: Signs.

3 (i) Form of Sign. A Sign shall be rectangular and at least 36 square
4 inches in size, with the word "WARNING" centered one-half of an inch from the top of the sign in
5 one-half inch capital letters. For the body of the warning message, left and right margins of at least
6 one-half of an inch, and a bottom margin of at least one-half inch shall be observed. The Symbol
7 must be at least one inch high. Larger signs shall bear substantially the same proportions of type
8 size and spacing to sign dimension as a sign that is 36 square inches in size. Unless modified by
9 agreement of the parties, the sign shall contain the following text (text in brackets s optional,
10 except as described above):

11 WARNING:
12 CALIFORNIA PROPOSITION 65
13 Products with the symbol
14 [Shown on Exhibit B or C]
Contain lead, a chemical known to the State of California to cause cancer and birth defects or
other reproductive harm

15 (ii) Placement of Sign. Signs shall be placed by the Effective Date
16 in each California establishment of Vitamin Shoppe in which any of the Covered Products are
17 available for sale to the public. Signs shall not be covered or obscured, and shall be placed and
18 displayed in a manner rendering them likely to be read and understood by an ordinary individual
19 prior to purchase. At least one Sign shall be posted in each aisle or on each shelf or display where
20 the Covered Products for which the warning is being provided are offered or displayed for sale,
21 unless the retail establishment has less than 7,500 square feet of retail space and no more than two
22 chase registers, in which case the Sign may be posted at each cash register. Additional signs shall
23 be posted as are necessary to assure that any potential purchaser of Covered Products would be
24 likely to see a Sign prior to purchase.

25 (B) Covered Products Sold in Retail Stores: Symbol. The Symbol shall be
26 prominently displayed by the Effective date and with such conspicuousness, as compared with
27 other words, statements, designs, or devices used at the point the Covered Products are offered for
28 sale, as to render the Symbol likely to be seen by an ordinary individual prior to purchase. The

1 Symbol shall be displayed on or adjacent to the Covered Products in any one or more of the
2 following locations:

3 (i) The Symbol may be permanently affixed to or prominently
4 printed on any placards, signs, or shelf stickers adjacent to the Covered Products that identify the
5 name or price of the Covered Products displayed, in which case the Symbol shall be no less than
6 one-quarter inch (0.25 inch) high; or

7 (ii) The Symbol may be permanently affixed to or printed on
8 (at the point of manufacture, prior to shipment to California, or prior to distribution within
9 California) the outside packaging or container of each unit of the Covered Products, in which case
10 the Symbol must be large enough that the characters in the Symbol are in a type size no smaller
11 than 6 point, and in no case shall the Symbol be less than one-quarter inch (0.25 inch) high.

12 (2) Other Clear and Reasonable Warnings in Retail Stores. In
13 stores not using the Identifying Signs and Designated Symbol in Retail Stores system described in
14 Section 3.2(a)(1), the Warning shall be permanently affixed to or printed on (at the point of
15 manufacture, prior to shipment to California, or prior to distribution within California) the outside
16 packaging or container of each unit of the Covered Products. The Warning shall be displayed with
17 such conspicuousness, as compared with other words, statements, designs, or devices on the
18 packaging or labeling, as to render it likely to be read and understood by an ordinary individual
19 prior to purchase. If the Warning is displayed on the product container or labeling, the Warning
20 shall be at least the same size as the largest of any other health or safety warnings on the product
21 container or labeling, and the word “**WARNING**” shall be in all capital letters and in bold print. If
22 printed on the labeling itself, the Warning shall be contained in the same section of the labeling
23 that states other safety warnings concerning the use of the product.

24 (b) For Covered Products sold by Vitamin Shoppe to California consumers through
25 the Internet, the Warning shall be prominently displayed on each webpage describing the
26 ingredients or attributes of a Covered Product, or the Warning may be provided at the time the
27 customer enters a California address for the shipping address. In addition, for each shipment of
28 any Covered Product resulting from such a sale, the Warning shall be displayed on the outside

1 packaging or container of each unit of the Covered Product or on the invoice that accompanies the
2 shipment of the Covered Product. In all circumstances, the Warning shall be displayed with such
3 conspicuousness, as compared with other words, statements, designs, or devices on the webpages,
4 product packaging, product container, or invoice, as to render it likely to be read and understood
5 by an ordinary individual prior to purchase. The Warning shall be at least the same size as the
6 largest of any other health or safety warnings on the webpage, invoice, or product packaging, and
7 the word “**WARNING**” shall be in all capital letters and in bold print. A Warning printed on an
8 invoice must be in a type size at least as tall as the largest letter or numeral in the name or price of
9 the Covered Product printed on the invoice. The requirements of this paragraph may be modified
10 by written agreement between Vitamin Shoppe and ERC.

11 (c) For Covered Products sold by Vitamin Shoppe to California consumers through a
12 printed catalog, the Warning shall be prominently displayed on each catalog page describing the
13 ingredients or attributes of a Covered Product. In addition, for each shipment of any Covered
14 Product resulting from such a sale, the Warning shall be displayed on the outside packaging or
15 container of each unit of the Covered Product or on the invoice that accompanies the shipment of
16 the Covered Product. In all circumstances, the Warning shall be displayed with such
17 conspicuousness, as compared with other words, statements, designs, or devices on the catalog
18 page, product packaging, product container, or invoice, as to render it likely to be read and
19 understood by an ordinary individual prior to use. The Warning shall be at least the same size as
20 the largest of any other health or safety warnings on the catalog page, invoice, or product
21 packaging, and the word “**WARNING**” shall be in all capital letters and in bold print. A Warning
22 printed on an invoice must be in a type size at least as tall as the largest letter or numeral in the
23 name or price of the Covered Product printed on the invoice.

24 (d) For sales and distribution of Covered Products not described in subsections (a), (b),
25 and (c) above, the Warning shall be provided at the point of sale or distribution prior to purchase
26 by the consumer. The Warning Shall be displayed with such conspicuousness, as compared with
27 other words, statements, designs, or devices, as to render it likely to be read and understood by an
28 ordinary individual prior to purchase. The Warning shall be at least the same size as the largest of

1 any other health or safety warnings presented, and the word “**WARNING**” shall be in all capital
2 letters and in bold print.

3 **3.3** No other statements about Proposition 65 may accompany the warnings set forth
4 in Section 3.2

5 **4. SETTLEMENT PAYMENT**

6 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
7 penalties, attorney’s fees, and costs, Vitamin Shoppe shall make a total payment of \$45,000.00
8 (“Total Settlement Amount”) to ERC within 15 days of the Effective Date. Vitamin Shoppe
9 shall make this payment by wire transfer to ERC’s escrow account, for which ERC will give
10 Vitamin Shoppe the necessary account information. The Total Settlement Amount shall be
11 apportioned as follows:

12 **4.2** \$21,717.00 shall be considered a civil penalty pursuant to California Health and
13 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$16,287.75) of the civil penalty to the
14 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
16 Code §25249.12(c). ERC will retain the remaining 25% (\$5,429.25) of the civil penalty.

17 **4.3** \$731.44 shall be distributed to ERC as reimbursement to ERC for reasonable
18 costs incurred in bringing this action.

19 **4.4** \$16,399.76 shall be distributed to ERC in lieu of further civil penalties, for the day-
20 to-day business activities such as (1) continued enforcement of Proposition 65, which includes
21 work, analyzing, researching and testing consumer products that may contain Proposition 65
22 chemicals, focusing on the same or similar type of ingestible products that are the subject
23 matter of the current action; (2) the continued monitoring of past consent judgments and
24 settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
25 donation of \$820.00 to the Center For Environmental Health to address reducing toxic chemical
26 exposures in California.

1 **4.5** \$925.00 shall be distributed to Ryan Hoffman for reimbursement of ERC’s
2 outside counsel’s legal fees while \$5226.80 shall be distributed to ERC for its in-house legal
3 fees.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
6 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
7 judgment.

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

20 **5.3** In the event that Vitamin Shoppe initiates or otherwise requests a modification
21 under Section 5.1, and the meet and confer process leads to a joint motion or application of the
22 Consent Judgment, Vitamin Shoppe shall reimburse ERC its costs and reasonable attorney’s
23 fees for the time spent in the meet-and-confer process and filing and arguing the motion or
24 application.

25 **5.4** Where the meet-and-confer process does not lead to a joint motion or
26 application in support of a modification of the Consent Judgment, then either Party may seek
27 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
28 and reasonable attorney’s fees. As used in the preceding sentence, the term “prevailing party”

1 means a party who is successful in obtaining relief more favorable to it than the relief that the
2 other party was amenable to providing during the Parties' good faith attempt to resolve the
3 dispute that is the subject of the modification.

4 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
5 **JUDGMENT**

6 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
7 this Consent Judgment.

8 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
17 behalf of itself and in the public interest, and Vitamin Shoppe and its respective officers,
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
19 suppliers, franchisees, licensees, customers (not including private label customers of Vitamin
20 Shoppe), distributors, wholesalers, retailers, and all other upstream and downstream entities in
21 the distribution chain of any Covered Product, and the predecessors, successors and assigns of
22 any of them (collectively, "Released Parties"), from any and all claims, actions, causes of
23 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that
24 could have been asserted from the handling, use, or consumption of the Covered Products, as to
25 any alleged violation of Proposition 65 or its implementing regulations arising from the failure
26 to provide Proposition 65 warnings on the Covered Products regarding lead up to and including
27 the Effective Date.

28 **8.2** ERC on its own behalf only, on one hand, and Vitamin Shoppe on its own

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

6 **8.3** It is possible that other claims not known to the Parties arising out of the facts
7 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
8 discovered. ERC on behalf of itself only, on one hand, and Vitamin Shoppe, on the other hand,
9 acknowledge that this Consent Judgment is expressly intended to cover and include all such
10 claims up through the Effective Date, including all rights of action therefore. ERC and Vitamin
11 Shoppe acknowledge that the claims released in Sections 8.1 and 8.2 above may include
12 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
13 unknown claims. California Civil Code section 1542 reads as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
15 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
16 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
17 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
18 OR HER SETTLEMENT WITH THE DEBTOR.

17 ERC on behalf of itself only, on the one hand, and Vitamin Shoppe, on the other hand,
18 acknowledge and understand the significance and consequences of this specific waiver of
19 California Civil Code section 1542.

20 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
21 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
22 in the Covered Products as set forth in the Notice and the Complaint.

23 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
24 environmental exposures arising under Proposition 65, nor shall it apply to any of Vitamin
25 Shoppe's products other than the Covered Products.

26 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1 **10. GOVERNING LAW**

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

4 **11. PROVISION OF NOTICE**

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

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

9 Chris Heptinstall, Executive Director, Environmental Research Center
10 3111 Camino Del Rio North, Suite 400
11 San Diego, CA 92108
12 Tel: (619) 500-3090
13 Email: chris_erc501c3@yahoo.com

14 With a copy to:

15 Anne Barker
16 Environmental Research Center, Inc.
17 3111 Camino Del Rio North, Suite 400
18 San Diego, CA 92108
19 Telephone: (619) 500-3090
20 Facsimile: (706) 858-0326

21 Michael Freund SBN 99687
22 Ryan Hoffman SBN 283297
23 Michael Freund & Associates
24 1919 Addison Street, Suite 105
25 Berkeley, CA 94704
26 Telephone: (510) 540-1992
27 Facsimile: (510) 540-5543

28 Attorney for Plaintiff Environmental Research Center, Inc.

29 **VITAMIN SHOPPE, INC. and**
30 **VITAMIN SHOPPE INDUSTRIES, INC.**

31 Carlos Lopez
32 The Vitamin Shoppe
33 300 Harmon Meadow Blvd
34 Secaucus, NJ 07094

1 **12. COURT APPROVAL**

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

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

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

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

24 If a dispute arises with respect to either Party's compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
26 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
27 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
28 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As

1 used in the preceding sentence, the term “prevailing party” means a party who is successful in
2 obtaining relief more favorable to it than the relief that the other party was amenable to providing
3 during the Parties’ good faith attempt to resolve the dispute that is the subject of such enforcement
4 action.

5 **16. ENTIRE AGREEMENT, AUTHORIZATION**

6 **16.1** This Consent Judgment contains the sole and entire agreement and
7 understanding of the Parties with respect to the entire subject matter herein, and any and all
8 prior discussions, negotiations, commitments and understandings related hereto. No
9 representations, oral or otherwise, express or implied, other than those contained herein have
10 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
11 herein, shall be deemed to exist or to bind any Party.

12 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
14 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

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

25 **IT IS SO STIPULATED:**
26
27
28


1 Dated: 11/13/, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC.

2
3 By: 
Chris Heptinstall, Executive Director

4 Dated: November 13, 2015

VITAMIN SHOPPE, INC., VITAMIN
SHOPPE INDUSTRIES, INC.

5
6
7 By: 
8 Its: UP, Deputy General Counsel

9 **APPROVED AS TO FORM:**

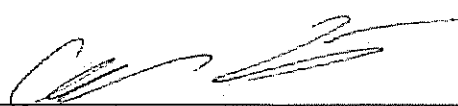
10 Dated: November 13, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC.

11
12 By: Anne Barker

Anne Barker
Attorney for Plaintiff Environmental
Research Center, Inc.

13
14 Dated: November 13, 2015

15 By: 
16 Carlos Lopez
17 Attorneys for Defendants Vitamin Shoppe,
Inc. and Vitamin Shoppe Industries, Inc.

18 **ORDER AND JUDGMENT**

19 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
20 approved and Judgment is hereby entered according to its terms.

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22 Dated: _____, 2015

23 Judge of the Superior Court

1 Dated: _____, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC.

2
3 By: _____
Chris Heptinstall, Executive Director

4 Dated: November 13, 2015

VITAMIN SHOPPE, INC., VITAMIN
SHOPPE INDUSTRIES, INC.

5
6 

7 By: Michael A. Zeffe
8 Its: UP, Deputy General Counsel

9 **APPROVED AS TO FORM:**

10 Dated: November 13, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC.

11
12 By: Anne Barker

Anne Barker
Attorney for Plaintiff Environmental
Research Center, Inc.

13
14 Dated: November 13, 2015

15
16 By: 

Carlos Lopez
Attorneys for Defendants Vitamin Shoppe,
Inc. and Vitamin Shoppe Industries, Inc.

17
18 **ORDER AND JUDGMENT**

19 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
20 approved and Judgment is hereby entered according to its terms.

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22 Dated: _____, 2015

23 Judge of the Superior Court

EXHIBIT A



Environmental Research Center

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

June 18, 2015

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

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the 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:

Vitamin Shoppe, Inc.
Vitamin Shoppe Industries Inc.

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

The Ultimate Life The Ultimate Meal Vegan Intro-Size - Lead
The Ultimate Life The Ultimate Meal Vegan Eco-Size - 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 purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 18, 2012, 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 handling and/or using 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 an expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Vitamin Shoppe, Inc., Vitamin Shoppe Industries Inc., and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Vitamin Shoppe, Inc. and Vitamin Shoppe Industries Inc.

I, Chris Heptinstall, declare:

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

2. I am the Executive Director for the noticing party.

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

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

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



Dated: June 18, 2015

Chris Heptinstall

CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within entitled action. 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 June 18, 2015, 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 the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Vitamin Shoppe, Inc.
2101 91st Street
North Bergen, NJ 07047

Corporation Service Company
(Vitamin Shoppe Industries Inc.’s
Registered Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Current President or CEO
Vitamin Shoppe Industries Inc.
2101 91st Street
North Bergen, NJ 07047

Corporation Service Company
(Vitamin Shoppe Industries Inc.’s
Registered Agent for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

Corporation Service Company
(Vitamin Shoppe, Inc.’s Registered Agent
for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Corporation Service Company
(Vitamin Shoppe, Inc.’s Registered
Agent for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

Corporation Service Company which will do business
in California as CSC-Lawyers Incorporating Service
(Vitamin Shoppe Industries Inc.’s Registered Agent
for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Corporation Service Company which will do
business in California as CSC-Lawyers Incorporating
Service
(Vitamin Shoppe, Inc.’s Registered Agent for Service
of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

On June 18, 2015, 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

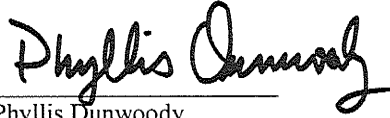
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 18, 2015

Page 5

On June 18, 2015, 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 June 18, 2015, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody", written in a cursive style.

Phyllis Dunwoody

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

June 18, 2015

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

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's 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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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 "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that 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

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>.

damage to 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 this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 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 a 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 a Food. Certain exposures to chemicals that occur in foods naturally (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 into 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 the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an 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.

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: July, 2012

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

EXHIBIT B

EXHIBIT B: Designated Symbol #1



EXHIBIT C

EXHIBIT C: Designated Symbol #2

**PROP 65
WARNING!**