

1 TANYA A. GULESSERIAN (State Bar No. 198640)
2 CHRISTINA M. CARO (State Bar No. 250797)
3 ADAMS BROADWELL JOSEPH & CARDOZO
4 601 Gateway Blvd., Suite 1000
5 South San Francisco, CA 94080-7037
6 Telephone: (650) 589-1660
7 Fax No.: (650) 589-5062
8 Email: tgulesserian@adamsbroadwell.com
9 ccaro@adamsbroadwell.com

6 Attorneys for Plaintiff
7 ENVIRONMENTAL RESEARCH CENTER, INC.

8 PEG CAREW TOLEDO (State Bar No. 181227)
9 PEG CAREW TOLEDO, LAW CORPORATION
10 3001 Douglas Blvd., Suite 340
11 Roseville, CA 95661-3853
12 Telephone: (916) 462-8950
13 Fax No.: (916) 791-0175
14 Email: peg@toledolawcorp.com

12 Attorneys for Defendants
13 FREELIFE INTERNATIONAL, INC. and
14 FREELIFE INTERNATIONAL HOLDINGS, LLC,

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

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

20 Plaintiff,

21 v.

22 FREELIFE INTERNATIONAL, INC., a
23 Connecticut corporation; FREELIFE
24 INTERNATIONAL HOLDINGS, LLC, a
25 Connecticut limited liability company; and
26 DOES 1-100, inclusive,

27 Defendants.

CASE NO. RG15798099

ASSIGNED FOR ALL PURPOSES TO
JUDGE BRAD SELIGMAN
DEPARTMENT 30

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 28, 2015
Trial Date: None Set

1 **1. INTRODUCTION**

2 **1.1** On December 28, 2015, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against Freelif International, Inc. and Freelif International Holdings, LLC. Freelif
7 International, Inc. and Freelif International Holdings, LLC will hereinafter be referred to
8 collectively as “Defendants.”

9 **1.2** In this action, ERC alleges that a number of products manufactured, distributed or
10 sold by Defendants contain lead, a chemical listed under Proposition 65 as a carcinogen and
11 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
12 warning. These products (referred to hereinafter individually as a “Covered Product” or
13 collectively as “Covered Products”) are:

- 14 a. FreeLife International Inc. TAI Slim 60 Shake Chocolate Naturally Flavored;
- 15 b. FreeLife International Inc. TAI Slim 60 Shake Vanilla;
- 16 c. FreeLife International Inc. TAI Slim 60 Appetite Control Supplement Goji
17 Berry; and
- 18 d. FreeLife International Inc. TAI Slim Boosters Super Greens.

19 **1.3** ERC and Defendants are hereinafter referred to collectively as the “Parties.”

20 **1.4** ERC is a 501 (C)(3) California non-profit corporation dedicated to, among other
21 causes, helping safeguard the public from health hazards by reducing the use and misuse of
22 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
23 and encouraging corporate responsibility.

24 **1.5** For purposes of this Consent Judgment only, the Parties agree that each of the
25 Defendants are business entities, each of which have employed ten or more persons and qualify as a
26 “person in the course of business” within the meaning of Proposition 65, and have manufactured,
27 distributed, and or/sold the Covered Products, at times relevant to this action.

28 **1.6** The Complaint is based on allegations contained in ERC’s Notice of Violation

1 dated October 16, 2015 that was served on the California Attorney General, other public
2 enforcers, and Defendants (“Notice”). A true and correct copy of the Notice is attached as
3 **Exhibit A** and is hereby incorporated by reference.

4 **1.7** At the time the Motion to Approve the Consent Judgment is heard in this matter,
5 more than 60 days will have passed since service of the Notice.

6 **1.8** ERC’s Notice and Complaint allege that Defendants manufactured, distributed,
7 and/or sold in California the Covered Products, which contain lead, a chemical known to the
8 State of California to cause cancer and reproductive toxicity, and expose consumers at a level
9 requiring a Proposition 65 warning. ERC further alleges that use of the Covered Products
10 exposes persons in California to lead without first providing clear and reasonable warnings in
11 violation of California Health and Safety Code section 25249.6. Defendants deny all material
12 allegations contained in the Notice and Complaint.

13 **1.9** The Parties have entered into this Consent Judgment in order to settle,
14 compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing
15 in this Consent Judgment shall constitute or be construed as an admission by any of the Parties,
16 or by any of their respective officers, directors, shareholders, employees, agents, parent
17 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
18 distributors, wholesalers, or retailers. Except for the representations made above, nothing in this
19 Consent Judgment shall be construed as an admission by the Parties of any fact, issue of law, or
20 violation of law, nor shall compliance with this Consent Judgment be construed as an admission
21 by the Parties of any fact, issue of law, or violation of law, at any time, for any purpose.

22 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall
23 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
24 other or future legal proceeding unrelated to these proceedings.

25 **1.11** The Effective Date of this Consent Judgment is the date that ERC serves and files
26 the Notice of Entry of the Consent Judgment.

27 **2. JURISDICTION AND VENUE**

28 For purposes of this Consent Judgment and any further court action that may become

1 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
2 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over
3 Defendants as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
4 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
5 claims up through and including the Effective Date which were or could have been asserted in this
6 action based on the facts alleged in the Notice and Complaint.

7 **3. INJUNCTIVE RELIEF**

8 **3.1** Beginning on the Effective Date, Defendants shall be permanently enjoined from
9 manufacturing for sale in the State of California, “Distributing into the State of California”, or
10 directly selling in the State of California, any Covered Product which exposes a person to a
11 “Daily Lead Exposure Level” of more than 0.5 micrograms per day of lead when the maximum
12 suggested dose is taken as directed on the Covered Product’s label, unless it meets the warning
13 requirements under Section 3.2. If at any time Defendants qualify as a “person in the course of
14 business” within the meaning of Proposition 65, the Defendants shall be subject to the terms of
15 this Section (Section 3. Injunctive Relief).

16 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State of
17 California” shall mean to directly ship a Covered Product into California for sale in California or
18 to sell a Covered Product to a distributor that Defendants know will sell the Covered Product in
19 California.

20 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level”
21 shall be measured in micrograms, and shall be calculated using the following formula:
22 micrograms of lead per gram of product, multiplied by grams of product per serving of the
23 product (using the largest serving size appearing on the product label), multiplied by servings of
24 the product per day (using the largest number of servings in a recommended dosage appearing on
25 the product label), which equals micrograms of lead exposure per day.

26 **3.2 Clear and Reasonable Warnings**

27 If is required to provide a warning pursuant to Section 3.1, the following warning must be
28 utilized:

1 **California Residents Proposition 65 WARNING:** This product contains [a] substance[s]
2 known to the State of California to cause [cancer and] birth defects or other reproductive
3 harm.

4 Defendants shall use the phrase “cancer and” in the warning only if the maximum daily dose
5 recommended on the label contains more than 15 micrograms of lead as determined pursuant to the
6 formula set forth in Section 3.1.2.

7 For Covered Products not sold over Defendants’ websites, the warning shall be securely
8 affixed to or printed upon the container or label of each Covered Product. For Covered Products
9 sold over Defendants’ websites and requiring a warning pursuant to Section 3.1, the warning shall
10 appear prior to the customer’s completion of the checkout process in at least one of the following
11 ways: (a) on Defendants’ checkout page on its websites identifying any Covered Product to which
12 the warning applies when a California delivery address is indicated for any Covered Product; (b)
13 on the same web page on which the Covered Product is displayed for sale prior to completing
14 checkout; (c) on the same page as the price for any Covered Product prior to completing checkout;
15 or (d) on one or more web pages displayed to the purchaser during the checkout process, but prior
16 to completing checkout, when a California delivery address is indicated for any Covered Product.
17 Alternatively, the Warning shall be provided on the invoice in boxes of Covered Products shipped
18 to California. Defendant shall provide one invoice Warning for each Covered Product in a box or
19 one invoice Warning that lists all of the Covered Products in the box. The Covered Products may
20 be returned by the consumer for a refund within 30 days of the invoice date at no cost to the
21 consumer if the consumer references the Warning as a reason for the return. The Warning must be
22 present on the front of the invoice.

23 The warning shall be at least the same size as the largest of any other health or safety
24 warnings also appearing on its website or on the label of the container of Defendants product
25 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No other
26 statements about Proposition 65 or lead may accompany the warning.

27 Defendants must display the above warnings with such conspicuousness, as compared with
28 other words, statements, or design of the label, container, or website, as applicable, to render the

1 warning likely to be read and understood by an ordinary individual under customary conditions of
2 purchase or use of the product.

3 **3.3 Reformulated Covered Products**

4 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when the
5 maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
6 contains no more than 0.5 micrograms of lead per day as determined by the quality control
7 methodology described in Section 3.4.

8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** Beginning within one year of the Effective Date, Defendants shall arrange
10 for lead testing of the Covered Products at least once a year for a minimum of five consecutive
11 years by arranging for testing of five randomly selected samples of each of the Covered
12 Products, in the form intended for sale to the end-user, which Defendants intend to sell or is
13 manufacturing for sale in California, directly selling to a consumer in California or "Distributing
14 into California." The testing requirement does not apply to any of the Covered Products for
15 which Defendants have provided the warning specified in Section 3.2. If tests conducted
16 pursuant to this Section demonstrate that no warning is required for a Covered Product during
17 each of five consecutive years, then the testing requirements of this Section will no longer be
18 required as to that Covered Product. However, if during or after the five-year testing period,
19 Defendants change ingredient suppliers for any of the Covered Products and/or reformulates any
20 of the Covered Products, Defendants shall test that Covered Product annually for at least four
21 (4) consecutive years after such change is made. For purposes of measuring the "Daily Lead
22 Exposure Level" and determining if a warning, if any, is required pursuant to Section 3.2, the
23 second highest lead detection result of the five (5) randomly selected samples of the Covered
24 Products will be controlling.

25 **3.4.2** All testing pursuant to this Consent Judgment shall be performed using a
26 laboratory method that complies with the performance and quality control factors appropriate for
27 the method used, including limit of detection, qualification, accuracy, and precision that meets
28 the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a

1 limit of quantification of less than or equal to 0.010 mg/kg or any other testing method
2 subsequently agreed to in writing by the Parties.

3 **3.4.3** All testing pursuant to this Consent Judgment shall be performed by an
4 independent third party laboratory certified by the California Environmental Laboratory
5 Accreditation Program or an independent third-party laboratory that is registered with the United
6 States Food & Drug Administration.

7 **3.4.4** Nothing in this Consent Judgment shall limit Defendants' ability to
8 conduct, or require that others conduct, additional testing of the Covered Products, including the
9 raw materials used in their manufacture.

10 **3.4.5** Defendants shall retain all test results and documentation for a period of
11 five years from the date of each test.

12 **4. SETTLEMENT PAYMENT**

13 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
14 penalties, attorney's fees, and costs, Freelifa shall make a total payment of \$85,000 ("Total
15 Settlement Amount") in six consecutive equal monthly payments to ERC by wire transfer to
16 ERC's escrow account, for which ERC will give Freelifa the necessary account information.
17 The first payment of \$14,170.00 shall be made within ten (10) business days of the Effective
18 Date, and the additional five payments of \$14,166.00 shall be paid in 30 day increments
19 thereafter ("Due Dates"). The Total Settlement Amount shall be apportioned as follows:

20 **4.2** \$10,000.00 shall be considered a civil penalty pursuant to California Health and
21 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$7,500.00) of the civil penalty to the Office
22 of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water
23 and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c).
24 ERC will retain the remaining 25% (\$2,500.00) of the civil penalty.

25 **4.3** \$11,710.30 shall be distributed to ERC as reimbursement to ERC for reasonable
26 costs incurred in bringing this action.

27 **4.4** \$40,500.00 shall be distributed to Adams Broadwell Joseph & Cardozo as
28 reimbursement of ERC's attorney's fees, while \$22,789.70 shall be distributed to ERC for its

1 in-house legal fees.

2
3 **4.5** In the event that Freeliflife fails to remit any installment payment owed under
4 Section 4 of this Consent Judgment on or before its respective Due Date, Freeliflife shall be
5 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
6 provide written notice of the delinquency to Freeliflife via electronic mail. If Freeliflife fails to
7 deliver the delinquent installment payment within five (5) days from the written notice, the Total
8 Settlement Amount shall become immediately due and payable and shall accrue interest at the
9 statutory judgment interest rate provided in the California Code of Civil Procedure section
10 685.010. Additionally, Freeliflife agrees to pay ERC's reasonable attorney's fees and costs for any
11 efforts to collect the payments due under this Consent Judgment.

12 **5. MODIFICATION OF CONSENT JUDGMENT**

13 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
14 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
15 judgment.

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

27 **5.3** In the event that Defendants initiates or otherwise requests a modification under
28 Section 5.1, and the meet and confer process leads to a joint motion or application of the Consent

1 Judgment, Defendants shall reimburse ERC its costs and reasonable attorney's fees for the time
2 spent in the meet-and-confer process and filing and arguing the motion or application.

3 **5.4** Where the meet-and-confer process does not lead to a joint motion or application
4 in support of a modification of the Consent Judgment, then either Party may seek judicial relief
5 on its own.

6 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
7 **JUDGMENT**

8 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
9 this Consent Judgment.

10 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
11 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
12 inform Defendants in a reasonably prompt manner of its test results, including information
13 sufficient to permit Defendants to identify the Covered Products at issue. Defendants shall,
14 within thirty days following such notice, provide ERC with testing information, from an
15 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
16 demonstrating Defendants' compliance with the Consent Judgment, if warranted. The Parties
17 shall first attempt to resolve the matter prior to ERC taking any further legal action.

18 **7. APPLICATION OF CONSENT JUDGMENT**

19 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
20 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
21 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
22 wholesalers, and retailers. This Consent Judgment shall have no application to Covered Products
23 which are distributed or sold exclusively outside the State of California and which are not used by
24 California consumers.

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

26 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
27 behalf of itself and in the public interest, and Defendants and their respective officers, directors,
28 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,

1 franchisees, licensees, customers (not including private label customers of Freelif), distributors,
2 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of
3 any Covered Product, and the predecessors, successors (including but not limited to Sorvana
4 International, LLC) and assigns of any of them (collectively, "Released Parties"), of any alleged
5 violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65
6 warnings of exposure to lead from the handling, use, or consumption of the Covered Products
7 and fully resolves all claims that have been or could have been asserted in this action up to and
8 including the Effective Date for failure to provide Proposition 65 warnings for the Covered
9 Products. ERC, on behalf of itself and in the public interest, hereby releases and discharges the
10 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
11 damages, penalties, fees, costs and expenses asserted, or that could have been asserted, as to any
12 alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on
13 the Covered Products regarding lead.

14 **8.2** ERC on its own behalf only, on one hand, and Defendants on their own behalf
15 only, on the other, further waive and release any and all claims they may have against each other
16 for all actions or statements made or undertaken in the course of seeking or opposing
17 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
18 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
19 any Party's right to seek to enforce the terms of this Consent Judgment.

20 **8.3** It is possible that other claims not known to the Parties arising out of the facts
21 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
22 discovered. ERC on behalf of itself only, on one hand, and Defendants on the other hand,
23 acknowledge that this Consent Judgment is expressly intended to cover and include all such
24 claims up through the Effective Date, including all rights of action therefore. ERC and
25 Defendants acknowledge that the claims released in Sections 8.1 and 8.2 above may include
26 unknown claims, and nevertheless waives California Civil Code section 1542 as to any such
27 unknown claims. California Civil Code section 1542 reads as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

1 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
2 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
3 SETTLEMENT WITH THE DEBTOR.

4 ERC on behalf of itself only, on the one hand, and Defendants, on the other hand, acknowledge
5 and understand the significance and consequences of this specific waiver of California Civil
Code section 1542.

6 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
7 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures to
8 lead in the Covered Products as set forth in the Notice and the Complaint.

9 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
10 environmental exposures arising under Proposition 65, nor shall it apply to any of Defendants
11 products other than the Covered Products.

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

15 **10. GOVERNING LAW**

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

18 **11. PROVISION OF NOTICE**

19 All notices required to be given to either Party to this Consent Judgment by the other shall
20 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified
21 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

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

23 Chris Heptinstall, Executive Director, Environmental Research Center
24 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
25 Tel: (619) 500-3090
Email: chris_erc501c3@yahoo.com

26 With a copy to:

27 TANYA A. GULESSERIAN (CBN 198640)
CHRISTINA M. CARO (CBN 250797)
28 ADAMS BROADWELL JOSEPH & CARDOZO

1 A Professional Corporation
2 601 Gateway Boulevard, Suite 1000
3 South San Francisco, CA 94080-7037
4 Telephone: (650) 589-1660
5 Facsimile: (650) 589-5062
6 Email: tgulesserian@adamsbroadwell.com
7 ccaro@adamsbroadwell.com

8 **FREELIFE INTERNATIONAL, INC. and**
9 **FREELIFE INTERNATIONAL HOLDINGS, LLC:**

10 Luke Taffuri
11 FreeLife International, Inc.
12 4717 E. Hilton Avenue, Suite 100
13 Phoenix, AZ 85034
14 LukeT@freelife.com

15 With a copy to:

16 Peg Carew Toledo
17 PEG CAREW TOLEDO, LAW CORPORATION
18 3001 Douglas Blvd., Suite 340
19 Roseville, CA 95661-3853
20 Telephone: (916) 462-8950
21 Facsimile: (916) 791-0175
22 Email: peg@toledolawcorp.com

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
28 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
prior to the hearing on the motion.

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

13. EXECUTION AND COUNTERPARTS

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

1 **14. DRAFTING**

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

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

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

15 **16. ENTIRE AGREEMENT, AUTHORIZATION**

16 **16.1** This Consent Judgment contains the sole and entire agreement and understanding
17 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
18 negotiations, commitments and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any Party.
20 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
21 exist or to bind any Party.

22 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
24 provided herein, each Party shall bear its own fees and costs.

25 **17. 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 regarding

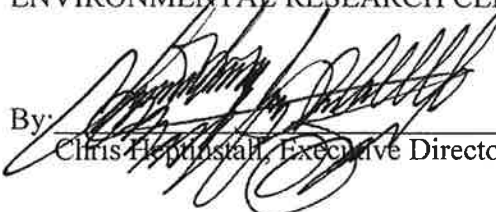
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the matters which are the subject of this action, to make the findings pursuant to California Health and Safety Code section 25249.7(f)(4) and approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: 5/11, 2017

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Hopps, Executive Director

Dated: 5/11, 2017

FREELIFE INTERNATIONAL, INC.

By: 
By: Luke Taffuri
Its: Chief Operating Officer

Dated: 5/11, 2017

FREELIFE INTERNATIONAL HOLDINGS, LLC


By: 
By: Luke Taffuri
Its: Chief Operating Officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:


Dated: May 1, 2017

ADAMS BROADWELL JOSEPH & CARDOZO

By: 
TANYA A. GULESSERIAN
CHRISTINA M. CARO
Attorneys for Plaintiff
Environmental Research Center, Inc.

Dated: May 3, 2017

PEG CAREW TOLEDO, LAW CORPORATION

By: 
Peg Carew Toledo
Attorneys for Defendants
FreeLife International, Inc. and
FreeLife International Holdings, 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: _____, 2017

Judge of the Superior Court

EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062
ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
ADAM J. REGELE
ELLEN L. WEHR

VIA CERTIFIED MAIL

Raymond Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International Holdings, L.L.C.
4950 South 48th Street
Phoenix, AZ 85040

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
4950 South 48th Street
Phoenix, AZ 85040

Raymond Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International Holdings, L.L.C.
4717 East Hilton Avenue, Suite 100
Phoenix, AZ 85034

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
4717 East Hilton Avenue, Suite 100
Phoenix, AZ 85034

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
333 Quarry Road
Milford, CT 06460

CT Corporation System
(FreeLife International, Inc.'s Registered
Agent for Service of Process)
3800 North Central Avenue, Suite 460
Phoenix, AZ 85012

VIA CERTIFIED MAIL

Steven P. Ciardiello, Esquire
(FreeLife International Holdings, L.L.C.'s
Registered Agent for Service of Process)
2840 Whitney Avenue
Hamden, CT 06518

Steven P. Ciardiello, Esquire
(FreeLife International Holdings, L.L.C.'s
Registered Agent for Service of Process)
1 Crystal Terrace
Woodbridge, CT 06525

Steven P. Ciardiello, Esquire
(FreeLife International, Inc.'s Registered
Agent for Service of Process)
2840 Whitney Avenue
Hamden, CT 06518

Steven P. Ciardiello, Esquire
(FreeLife International, Inc.'s Registered
Agent for Service of Process)
1 Crystal Terrace
Woodbridge, CT 06525

Raymond Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International Holdings, L.L.C.
1250 North Fairway Drive
Building A, Suite 104
Avondale, AZ 85323

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
1250 North Fairway Drive
Building A, Suite 104
Avondale, AZ 85323

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

October 16, 2015

Page 2

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

VIA ELECTRONIC MAIL

Yolo County District Attorney
301 2nd Street
Woodland, CA 95695
cfepd@yolocounty.org

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

FreeLife International, Inc.
FreeLife International Holdings, L.L.C.

The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **FreeLife International Inc. TAI Slim 60 Shake Chocolate Naturally Flavored - Lead**
- **FreeLife International Inc. TAI Slim 60 Shake Vanilla - Lead**
- **FreeLife International Inc. TAI Slim 60 Appetite Control Supplement Goji Berry - Lead**
- **FreeLife International Inc. TAI Slim Boosters Super Greens - 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.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65,

October 16, 2015

Page 3

prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since October 16, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to FreeLife International, Inc., FreeLife International Holdings, L.L.C. 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 FreeLife International, Inc. and FreeLife International Holdings, L.L.C.**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 16, 2015



Christina M. Caro

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 October 16, 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:

Raymond Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International Holdings,
L.L.C.
4950 South 48th Street
Phoenix, AZ 85040

Steven P. Ciardiello, Esquire
(FreeLife International Holdings, L.L.C.’s
Registered Agent for Service of Process)
2840 Whitney Avenue
Hamden, CT 06518

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
4950 South 48th Street
Phoenix, AZ 85040

Steven P. Ciardiello, Esquire
(FreeLife International Holdings, L.L.C.’s
Registered Agent for Service of Process)
1 Crystal Terrace
Woodbridge, CT 06525

Raymond Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International Holdings,
L.L.C.
4717 East Hilton Avenue,
Suite 100
Phoenix, AZ 85034

Steven P. Ciardiello, Esquire
(FreeLife International, Inc.’s Registered
Agent for Service of Process)
2840 Whitney Avenue
Hamden, CT 06518

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
4717 East Hilton Avenue,
Suite 100
Phoenix, AZ 85034

Steven P. Ciardiello, Esquire
(FreeLife International, Inc.’s Registered
Agent for Service of Process)
1 Crystal Terrace
Woodbridge, CT 06525

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
333 Quarry Road
Milford, CT 06460

Raymond Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International Holdings, L.L.C.
1250 North Fairway Drive
Building A, Suite 104
Avondale, AZ 85323

CT Corporation System
(FreeLife International, Inc.’s Registered
Agent for Service of Process)
3800 North Central Avenue, Suite 460
Phoenix, AZ 85012

Raymond J. Faltinsky or Current CEO
Kevin Fournier or Current President
FreeLife International, Inc.
1250 North Fairway Drive
Building A, Suite 104
Avondale, AZ 85323

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
October 16, 2015
Page 6

On October 16, 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> :

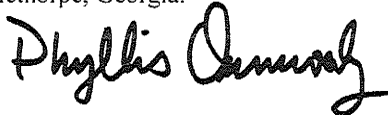
Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On October 16, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Yolo County District Attorney
301 2nd Street
Woodland, CA 95695
cfepd@volocounty.org

On October 16, 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 Priority Mail.

Executed on October 16, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

October 16, 2015

Page 7

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, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
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	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
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	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
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 Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
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 Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
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	
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. Please refer 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.

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 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 say 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 Periods. 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.

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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
 - Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days;
- and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

The notice is reproduced here:

Date: October 16, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**

Date: October 16, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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>.

² See Section 25501(a)(4).

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.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A