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10 Attorneys for Plaintiff
11 ENVIRONMENTAL RESEARCH CENTER, INC.

12 DANIEL S. SILVERMAN (CBN 137864)
13 VENABLE LLP
14 2049 Century Park East, Suite 2300
15 Los Angeles, CA 90067
16 Tel: (310) 229-0373
17 Fax: (310) 229-9901
18 Email: dssilverman@venable.com

19 Attorney for Defendant
20 BPI SPORTS, LLC dba CUTLER NUTRITION

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF ALAMEDA

23 ENVIRONMENTAL RESEARCH
24 CENTER, INC. a non-profit California
25 corporation,

26 Plaintiff,

27 v.

28 BPI SPORTS, LLC dba CUTLER
29 NUTRITION, a Florida Limited Liability
30 Company,

31 Defendants.

CASE NO.

**STIPULATED CONSENT
JUDGMENT; [PROPOSED]
ORDER**

Health & Safety Code § 25249.5 *et
seq.*

Action Filed: September 12, 2016
Trial Date: None set

32 **1. INTRODUCTION**

33 **1.1** On September 12, 2016, Plaintiff Environmental Research Center, Inc.
34 (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this
35 action by filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant
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1 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition
2 65”), against Defendant BPI SPORTS, LLC dba CUTLER NUTRITION (“BPI SPORTS”), a
3 Florida Limited Liability Company (“BPI SPORTS” or “Defendant”). In this action, ERC
4 alleges that a number of products manufactured, distributed or sold by Defendant contain lead, a
5 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
6 consumers to this chemical at a level requiring a Proposition 65 warning. These products named
7 in ERC’s complaint (referred to hereinafter individually as a “Covered Product” or collectively
8 as “Covered Products”) are:

- 9 • Cutler Nutrition Total Protein Banana Cream Pie
- 10 • Cutler Nutrition Total Protein Strawberry Graham Cracker
- 11 • Cutler Nutrition Total Protein S'mores – Lead
- 12 • Cutler Nutrition Total Protein Chocolate Brownie
- 13 • Cutler Nutrition Total Protein Creamy Vanilla

14 **1.2** ERC and Defendant are hereinafter referred to individually as a “Party” or
15 collectively as the “Parties.”

16 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
17 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
18 and toxic chemicals, facilitating a safe environment for consumers and employees, and
19 encouraging corporate responsibility.

20 **1.4** BPI SPORTS qualifies as a “person in the course of business” within the meaning
21 of Proposition 65. BPI SPORTS manufactures, distributes and sells the Covered Products.

22 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
23 dated January 13, 2016, that was served on the California Attorney General, other public
24 enforcers, and BPI SPORTS (“Notice”). A true and correct copy of the Notice is attached as
25 **Exhibit A** and is hereby incorporated by reference. More than 60 days have passed since the
26 Notice was mailed and uploaded to the Attorney General’s website, and no designated
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1 governmental entity has filed a complaint against BPI SPORTS with regard to the Covered
2 Products or the alleged violations.

3 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
4 persons in California to lead without first providing clear and reasonable warnings, in violation
5 of California Health and Safety Code section 25249.6. BPI SPORTS denies all material
6 allegations contained in the Notice and Complaint.

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

16 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
17 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
18 other or future legal proceeding unrelated to these proceedings.

19 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
20 a Judgment by this Court.

21 **2. JURISDICTION AND VENUE**

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

3 **3. INJUNCTIVE RELIEF**

4 Except as expressly set forth herein, commencing on the Effective Date, BPI SPORTS
5 shall be permanently enjoined from manufacturing for sale in the State of California, marketing
6 or “Distributing into the State of California,” and directly selling any of the Covered Products in
7 the State of California. “Distributing into the State of California” shall mean to directly ship a
8 Covered Product into California for sale in California or to sell a Covered Product to a distributor
9 that BPI SPORTS knows intends to or will sell the Covered Product in California. Covered
10 Products manufactured before the Effective Date are not subject to the obligations imposed by
11 section 3 irrespective of when they are sold. The final lot numbers of Covered Products
12 manufactured before the Effective Date will be provided to ERC no more than (20) twenty days
13 after the Effective Date and such Covered Products will not be covered by this permanent
14 injunction.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
17 penalties, attorney’s fees, and costs, Defendant shall make a total payment of \$72,000.00 (“Total
18 Settlement Amount”) in settlement payments to ERC on the following schedule: An initial
19 payment of Eighteen Thousand Dollars (\$18,000) shall be made to ERC fourteen (14) days after
20 the Effective Date (the Initial Payment), followed by three (3) payments in the amount of
21 Eighteen Thousand Dollars (\$18,000) each payable no later than thirty (30), sixty (60) and ninety
22 (90) days after the Initial Payment. Defendant shall make these payments by wire transfer to
23 ERC’s escrow account, for which ERC will give Defendant the necessary account information.
24 The Total Settlement Amount shall be apportioned as follows:

25 **4.2** \$19,500.00 shall be considered a civil penalty pursuant to California Health and
26 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$14,625.00) of the civil penalty to the
27 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
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1 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
2 Code §25249.12(c). ERC will retain the remaining 25% (\$4,875.00) of the civil penalty.

3 **4.3** \$1,002.94 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 **4.4** \$19,122.36 shall be distributed to ERC in lieu of further civil penalties, for the
6 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
7 includes work, analyzing, researching and testing consumer products that may contain
8 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the
9 subject matter of the current action; (2) the continued monitoring of past consent judgments and
10 settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
11 donation of \$950.00 to the As You Sow to address reducing toxic chemical exposures in
12 California.

13 **4.5** \$17,610.50 shall be distributed to Adams Broadwell Joseph & Cardozo as
14 reimbursement of ERC's attorney's fees, while \$14,764.20 shall be distributed to ERC for its
15 in-house legal fees.

16 **4.6** In the event that Defendant fails to remit the Total Settlement Payment owed
17 under Section 4 of this Consent Judgment on or before the due dates, Defendant shall be deemed
18 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
19 written notice of the delinquency to Defendant via electronic mail. If Defendant fails to deliver
20 the Total Settlement Payment within ten (10) days from receipt of the written notice, the Total
21 Settlement Payment shall become immediately due and payable and shall accrue interest at the
22 statutory judgment interest rate provided in the Code of Civil Procedure section 685.010.

23 Additionally, Defendant agrees to pay ERC's reasonable attorney's fees and costs for any efforts
24 to collect the payment due under this Consent Judgment.

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1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written
3 stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified
4 consent judgment.

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

17 **5.3** In the event that Defendant initiates or otherwise request a modification pursuant
18 Section 5.1, and the meet and confer process leads to a joint motion or application of the Consent
19 Judgment, Defendant shall reimburse ERC its costs and reasonable attorney’s fees for the time
20 spent in the meet-and-confer process and filing and arguing the motion or application.

21 **5.4** Where the meet-and-confer process does not lead to a joint motion or application
22 in support of a modification of the Consent Judgment, then either Party may seek judicial relief
23 on its own.

24 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
25 **JUDGMENT**

26 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
27 Consent Judgment.

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1 **7. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment applies to, shall be binding upon, and benefit the Parties and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
5 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
6 application to Covered Products which are distributed or sold exclusively outside the State of
7 California and which are not used by California consumers.

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
10 on behalf of itself and in the public interest; BPI SPORTS and its respective officers, directors,
11 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
12 franchisees, licensees, customers (not including private label customers of BPI SPORTS),
13 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
14 distribution chain of any Covered Product including, but not limited to, bodybuilding.com,
15 Europa and Muscle Strength ("Released Parties"). ERC hereby fully releases and discharges the
16 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
17 damages, penalties, fees, costs and expenses asserted, or that could have been asserted from the
18 handling, use, or consumption of the Covered Products, as to any alleged violation of
19 Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65
20 warnings on the Covered Products regarding lead up to and including the Effective Date.

21 **8.2** ERC on its own behalf only, on one hand, and Defendant on its own behalf
22 only, on the other, further waive and release any and all claims they may have against each other
23 for all actions or statements made or undertaken in the course of seeking or opposing
24 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
25 including the Effective Date; provided, however, that nothing in Section 8 shall affect or limit
26 any Party's right to seek to enforce the terms of this Consent Judgment.

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1 **8.3** It is possible that other claims not known to the Parties arising out of the facts
2 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
3 discovered. ERC on behalf of itself only, on one hand, and Defendant, on the other hand,
4 acknowledge that this Consent Judgment is expressly intended to cover and include all such
5 claims up through the Effective Date; including all rights of action therefore. ERC and
6 Defendant acknowledge that the claims released in Sections 8.1 and 8.2 above may include
7 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
8 unknown claims. California Civil Code section 1542 reads as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
11 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
12 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
13 THE DEBTOR.

14 ERC on behalf of itself only, on the one hand, and Defendant, on the other hand, acknowledge
15 and understand the significance and consequences of this specific waiver of California Civil
16 Code section 1542.

17 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
18 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in
19 the Covered Products as set forth in the Notice and the Complaint.

20 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
21 environmental exposures arising under Proposition 65, nor shall it apply to any of Defendant's
22 products other than the Covered Products.

23 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

26 **10. GOVERNING LAW**

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

1 **11. PROVISION OF NOTICE**

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

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

6 Chris Heptinstall, Executive Director, Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108
9 Tel: (619) 500-3090
 Email: chris_erc501c3@yahoo.com

10 With a copy to:
11 TANYA A. GULESSERIAN
12 CHRISTINA M. CARO
13 ADAMS BROADWELL JOSEPH & CARDOZO
14 601 Gateway Boulevard, Suite 1000
15 South San Francisco, CA 94080-7037
16 Telephone: (650) 589-1660
17 Facsimile: (650) 589-5062
18 Email: tgulesserian@adamsbroadwell.com
19 ccaro@adamsbroadwell.com

20 **FOR BPI SPORTS, LLC dba CUTLER NUTRITION:**

21 Derek Ettinger, Chief Executive Officer, BPI Sports, LLC
22 3149 S.W. 42nd Street, Suite 200
23 Hollywood, FL 33312

24 With a copy to:
25 DANIEL S. SILVERMAN
26 VENABLE LLP
27 2049 Century Park East, Suite 2300
28 Los Angeles, CA 90067
 Tel: (310) 229-0373
 Fax: (310) 229-9901
 Email: dssilverman@venable.com

29 **12. COURT APPROVAL**

30 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
31 Motion for Court Approval. Following Court Approval of the Consent Judgment, ERC shall

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1 comply with California Health and Safety Code section 25249.7(f) and with Title II of the
2 California Code of Regulations, section 3004. The Parties shall use their best efforts to support
3 entry of this Consent Judgment.

4 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
5 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
6 prior to the hearing on the motion.

7 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be void
8 and have no force or effect.

9 **13. EXECUTION AND COUNTERPARTS**

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

13 **14. DRAFTING**

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

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

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

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1 **16. ENFORCEMENT**

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

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

11 **17.1** This Consent Judgment contains the sole and entire agreement and understanding
12 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
13 negotiations, commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party.
15 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
16 exist or to bind any Party.

17 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
19 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

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

IT IS SO STIPULATED:

Dated: 9/18/, 2016

ENVIRONMENTAL RESEARCH CENTER, INC

By: 
Chris Herdinstall, Executive Director

Dated: _____, 2016

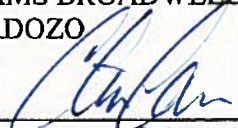
BPI SPORTS, LLC dba CUTLER NUTRITION

By:
Its:

APPROVED AS TO FORM:

Dated: September 20, 2016

ADAMS BROADWELL JOSEPH & CARDOZO

By: 
Tanya A. Gulesserian
Christina M. Caro
Attorneys for Plaintiff Environmental Research Center, Inc.

Dated: _____, 2016

VENABLE LLP

By: _____
Daniel S. Silverman
Attorney for Defendant BPI Sports, LLC
dba Cutler Nutrition

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

IT IS SO STIPULATED:

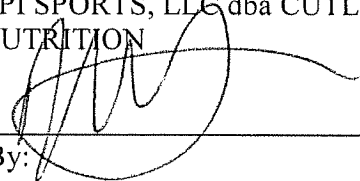
Dated: _____, 2016

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: 9/20, 2016

BPI SPORTS, LLC dba CUTLER NUTRITION


By: _____
Its: _____

APPROVED AS TO FORM:

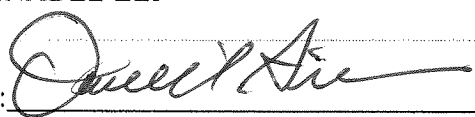
Dated: _____, 2016

ADAMS BROADWELL JOSEPH & CARDOZO

By: _____
Tanya A. Gulesserian
Christina M. Caro
Attorneys for Plaintiff Environmental Research Center, Inc.

Dated: 9-20, 2016

VENABLE LLP


By: _____
Daniel S. Silverman
Attorney for Defendant BPI Sports, LLC dba Cutler Nutrition

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2016

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
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ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

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THOMAS A. ENSLOW
TANYA A. GULESSERIAN
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
ELLEN L. WEHR

VIA CERTIFIED MAIL

Derek Ettinger or Current CEO
BPI Sports, LLC dba Cutler Nutrition
3149 SW 42nd Street, #200
Fort Lauderdale, FL 33312

Derek Ettinger or Current CEO
BPI Sports, LLC dba Cutler Nutrition
3149 SW 42nd Street, #200
Hollywood, FL 33312

Cary A Lubetsky, Esquire
(BPI Sports, LLC dba Cutler Nutrition's
Registered Agent for Service of Process)
c/o Krinzman, Huss & Lubetsky
800 Brickell Avenue, Suite 1501
Miami, FL 33131

Ryan Deluca or Current CEO
Bodybuilding.com, LLC dba
Bodybuilding.com
5777 North Meeker Avenue
Boise, ID 83713

Ryan Deluca or Current CEO
Bodybuilding.com, LLC dba
Bodybuilding.com
305 North Steelhead Way
Boise, ID 83704

Ryan Deluca or Current CEO
Bodybuilding.com, LLC dba
Bodybuilding.com
2026 South Silverstone Way
Meridian, ID 83642

VIA CERTIFIED MAIL

The Prentice Hall Corporation System, Inc.
(Bodybuilding.com, LLC
dba Bodybuilding.com's
Registered Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Prentice Hall Corporation System
(Bodybuilding.com, LLC
dba Bodybuilding.com's
Registered Agent for Service of Process)
12550 West Explorer Drive, Suite 100
Boise, ID 83713

VIA ELECTRONIC MAIL

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Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
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Susanville, CA 96130
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Dije Ndreu, Deputy District Attorney
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Prop65DA@co.monterey.ca.us

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

January 13, 2016

Page 2

VIA ELECTRONIC MAIL

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Stephan R. Passalacqua, District Attorney
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daspecialops@ventura.org

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

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)

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

Dear Addressees:

I represent the 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:

BPI Sports, LLC dba Cutler Nutrition
Bodybuilding.com, LLC dba Bodybuilding.com

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

- 1. Cutler Nutrition Total Protein Banana Cream Pie - Lead**
- 2. Cutler Nutrition Total Protein Strawberry Graham Cracker - Lead**
- 3. Cutler Nutrition Total Protein S'mores - Lead**
- 4. Cutler Nutrition Total Protein Chocolate Brownie - Lead**
- 5. Cutler Nutrition Total Protein Creamy Vanilla - 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, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

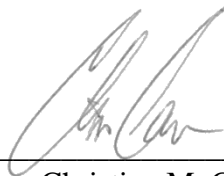
The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, 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 January 13, 2013 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 BPI Sports, LLC dba Cutler Nutrition, Bodybuilding.com, LLC dba Bodybuilding.com 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 BPI Sports, LLC dba Cutler Nutrition and Bodybuilding.com, LLC dba Bodybuilding.com

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: January 13, 2016



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 January 13, 2016, 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:

Derek Ettinger or Current CEO
BPI Sports, LLC dba Cutler Nutrition
3149 SW 42nd Street, #200
Fort Lauderdale, FL 33312

Cary A Lubetsky, Esquire
(BPI Sports, LLC dba Cutler Nutrition’s
Registered Agent for Service of Process)
c/o Krinzman, Huss & Lubetsky
800 Brickell Avenue, Suite 1501
Miami, FL 33131

Derek Ettinger or Current CEO
BPI Sports, LLC dba Cutler Nutrition
3149 SW 42nd Street, #200
Hollywood, FL 33312

The Prentice Hall Corporation System, Inc.
(Bodybuilding.com, LLC dba Bodybuilding.com’s
Registered Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Ryan Deluca or Current CEO
Bodybuilding.com, LLC dba
Bodybuilding.com
5777 North Meeker Avenue
Boise, ID 83713

Prentice Hall Corporation System
(Bodybuilding.com, LLC dba Bodybuilding.com’s
Registered Agent for Service of Process)
12550 West Explorer Drive, Suite 100
Boise, ID 83713

Ryan Deluca or Current CEO
Bodybuilding.com, LLC dba
Bodybuilding.com
305 North Steelhead Way
Boise, ID 83704

Ryan Deluca or Current CEO
Bodybuilding.com, LLC dba
Bodybuilding.com
2026 South Silverstone Way
Meridian, ID 83642

On January 13, 2016, 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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
January 13, 2016
Page 7

On January 13, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

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

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

On January 13, 2016, 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 January 13, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

January 13, 2016

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Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles County
210 West Temple Street, Suite 1800
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

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: January 13, 2016

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: January 13, 2016

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

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