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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15

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

18 Plaintiff,

19 v.

20 USANA HEALTH SCIENCES, INC., a  
21 UTAH corporation,  
22

23 Defendant.  
24

CASE NO. RG16840320

STIPULATED CONSENT  
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 28, 2016

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On November 28, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"),  
27 a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
28 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the

1 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
2 against USANA Health Sciences, Inc. (“USANA”). In this action, ERC alleges that a number  
3 of products manufactured, distributed or sold by USANA contain lead, a chemical listed under  
4 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical  
5 at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
6 individually as a “Covered Product” or collectively as “Covered Products”) are those identified  
7 in the 60-Day Notices of Violation attached hereto as Exhibits A and B and incorporated herein  
8 by reference.

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

11       **1.3** ERC is a California non-profit corporation dedicated to, among other causes,  
12 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
13 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
14 encouraging corporate responsibility.

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

19       **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
20 dated February 19, 2016 and October 15, 2016 that were served on the California Attorney  
21 General, other public enforcers, and USANA (“Notices”). A true and correct copy of the  
22 Notices are attached as Exhibit A and B, and are hereby incorporated by reference. As of the  
23 date that this Stipulated Consent Judgment was transmitted to the California Attorney General  
24 and presented to this Court, more than 60 days have passed since the Notices were mailed and  
25 uploaded to the Attorney General’s website, and no designated governmental entity has filed a  
26 complaint against USANA with regard to the Covered Products or the alleged violations.

27       **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes  
28 persons in California to lead without first providing clear and reasonable warnings in violation

1 of California Health and Safety Code section 25249.6. USANA denies all material allegations  
2 contained in the Notices and Complaint.

3       **1.7** The Parties have entered into this Consent Judgment in order to settle,  
4 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
5 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
6 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
7 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
8 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
9 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
10 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
11 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
12 purpose.

13       **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
15 other or future legal proceeding unrelated to these proceedings.

16       **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as  
17 a Judgment by this Court.

## 18       **2. JURISDICTION AND VENUE**

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

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

27       **3.1** Beginning on the Effective Date, USANA shall be permanently enjoined from  
28 manufacturing for sale in the State of California, "Distributing into the State of California", or

1 directly selling in the State of California, any Covered Product which exposes a person to a  
2 “Daily Lead Exposure Level” of more than 0.5 micrograms per day of lead when the maximum  
3 suggested dose is taken as directed on the Covered Product’s label, excluding any lead deemed  
4 “naturally occurring” in Section 3.3 for purposes of this Consent Judgment only, unless it meets  
5 the warning requirements under Section 3.2.

6           **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
7 of California” shall mean to directly ship a Covered Product into California for sale in  
8 California or to sell a Covered Product to a distributor that USANA knows will sell the  
9 Covered Product in California.

10           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
11 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
12 micrograms of lead per gram of product minus any lead deemed “naturally occurring” in  
13 Section 3.3 for purposes of this Consent Judgment only, multiplied by grams of product per  
14 serving of the product (using the largest serving size appearing on the product label), multiplied  
15 by servings of the product per day (using the largest number of servings in a recommended  
16 dosage appearing on the product label), which equals micrograms of lead exposure per day.

## 17           **3.2 Clear and Reasonable Warnings**

18           If USANA is required to provide a warning pursuant to Section 3.1, the following warning  
19 must be utilized:

20           **WARNING:** This product contains lead, a chemical known to the State of California to  
21 cause [cancer and] birth defects or other reproductive harm.

22           OR:

23           **WARNING:** This product contains chemicals, including lead, known to the State of  
24 California to cause [cancer and] birth defects or other reproductive harm.

25           OR:

26           **WARNING:** This product can expose you to chemicals including lead which are known to  
27 the State of California to cause [cancer and] birth defects or other reproductive harm. For  
28 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1 USANA shall use the phrase “cancer and” in the warning only if USANA reasonably  
2 believes the maximum daily dose recommended on the label contains more than 15 micrograms of  
3 lead as determined pursuant to the quality control methodology set forth in Section 3.4, or if  
4 USANA reasonably believes that the daily exposure level for another Proposition 65 listed  
5 carcinogen in the Covered Product contains at levels greater than the No Significant Risk Level  
6 (“NSRL”) set forth in 27 California Code of Regulations § 25705.

7 For website sales, the warning shall appear on USANA’s website, either adjacent to the  
8 Covered Product display, or adjacent to the Covered Product description, or made available  
9 during the checkout process when a California delivery address is indicated for any purchase of  
10 any Covered Product. The warning shall be accompanied by the following statement: “If you  
11 are purchasing this product/these products for resale in the state of California, you are required to  
12 provide your customer with the warnings set out above. Please contact us if you require a  
13 warning.” For non-website sales by USANA, the warning shall be securely affixed to or printed  
14 upon the container or label of each Covered Product.

15 The warning shall be at least the same size as the largest of any other health or safety  
16 warnings also appearing on its website or, for non-website sales by USANA, on the label or  
17 container of USANA’s product packaging and the word “**WARNING**” shall be in all capital  
18 letters and in bold print. No other statements contradicting the warning may accompany the  
19 warning.

20 USANA must display the above warnings with such conspicuousness, as compared with  
21 other words, statements, or design of the label, container, or webpage, as applicable, to render the  
22 warning likely to be read and understood by an ordinary individual under customary conditions of  
23 purchase or use of the product.

### 24 **3.3 Reformulated Covered Products**

25 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when  
26 the maximum suggested dose is taken as directed on the Reformulated Covered Product’s label,  
27 contains no more than 0.5 micrograms of lead per day as determined by the quality control  
28 methodology described in Section 3.4, excluding amounts of naturally occurring lead in the

ingredients listed in the table below.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa Powder	1.0 micrograms/gram

If at any time after the Effective Date, ERC tests a Reformulated Covered Product and the test results indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day. USANA agrees to confidentially supply to ERC, within 30 days of a request from ERC, a list of ingredients, including the percentage of each ingredient of that particular covered product so that ERC may be able to calculate the daily exposure based on allowances contained in the above table. Should a dispute arise, the Parties shall first meet and confer in an effort to fully resolve any dispute.

### **3.4 Testing and Quality Control Methodology**

**3.4.1** To determine the Daily Exposure Level for a Covered Product, USANA shall arrange for lead testing of five randomly selected samples of such Covered Product, in the form intended for sale to the end-user, which USANA intends to sell or is manufacturing for sale in California or directly selling to a consumer in California or "Distributing into California." The testing requirement of this Section 3.4 does not apply to any of the Covered Products for which USANA has provided the warning specified in Section 3.2. If tests

1 conducted pursuant to this Section demonstrate the Daily Exposure Level for the Covered  
2 Product is below 0.5 micrograms per day, taking into account amounts of naturally occurring  
3 lead as set forth in Section 3.3, then no warning shall be required for the Covered Product. If  
4 test results for such Covered Product show, for three consecutive years, that the Daily Exposure  
5 Level is below 0.5 micrograms per day, then no warning shall be required for such Covered  
6 Product and no further testing shall be required. However, if during or after the three-year  
7 testing period, USANA changes ingredient suppliers for any of the Covered Products and/or  
8 reformulates any of the Covered Products, USANA shall test that Covered Product annually for  
9 at least three (3) consecutive years after such change is made.

10 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level”, the highest  
11 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
12 controlling.

13 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
14 laboratory method that complies with the performance and quality control factors appropriate  
15 for the method used, including limit of detection, qualification, accuracy, and precision that  
16 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
17 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
18 method subsequently agreed to in writing by the Parties.

19 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
20 independent third party laboratory certified by or pursuant to the EPA, FDA, or the State of  
21 California, ISO/IEC 17025:2005, American National Standards Institute /American Society for  
22 Quality (“ANSI-ASQ”), Food Analysis Performance Assessment Scheme (“FAPAS”), American  
23 Association for Laboratory Accreditation (“A2LA”), or the International Accreditation Service.  
24 USANA shall retain all test results and documentation for a period of five years from the date of  
25 each test.

26 **3.4.5** Nothing in this Consent Judgment shall limit USANA’s ability to  
27 conduct, or require that others conduct, additional testing of the Covered Products, including  
28 the raw materials used in their manufacture.

1     **4. SETTLEMENT PAYMENT**

2           **4.1**     In full satisfaction of all potential civil penalties, payment in lieu of civil  
3 penalties, attorney's fees, and costs, USANA shall make a total payment of \$275,000.00  
4 ("Total Settlement Amount") to ERC within 10 business days of the Effective Date. USANA  
5 shall make this payment by wire transfer to ERC's escrow account, for which ERC will give  
6 USANA the necessary account information. The Total Settlement Amount shall be  
7 apportioned as follows:

8           **4.2**     \$133,933.20 shall be considered a civil penalty pursuant to California Health  
9 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$100,449.90) of the civil penalty to  
10 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
11 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
12 Code §25249.12(c). ERC will retain the remaining 25% (\$33,483.30) of the civil penalty.

13           **4.3**     \$4,796.20 shall be distributed to ERC as reimbursement to ERC for reasonable  
14 costs incurred in bringing this action.

15           **4.4**     \$100,449.70 shall be distributed to ERC as an Additional Settlement Payment  
16 ("ASP"), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d) and  
17 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
18 caused by Defendant in this matter. These activities are detailed below and support ERC's  
19 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
20 supplement products in California. ERC's activities have had, and will continue to have, a direct  
21 and primary effect within the State of California because California consumers will be benefitted  
22 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
23 providing clear and reasonable warnings to California consumers prior to ingestion of the  
24 products.

25           Based on a review of past years' actual budgets, ERC is providing the following list of  
26 activities ERC engages in to protect California consumers through Proposition 65 citizen  
27 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
28 activities: (1) ENFORCEMENT (55-70%): obtaining, shipping, analyzing, and testing dietary



1 supplement products that may contain lead and are sold to California consumers; continued  
2 monitoring and enforcement of past consent judgments and settlements to ensure companies are  
3 in compliance with their obligations thereunder, with a specific focus on those judgments and  
4 settlements concerning lead (which necessarily includes additional work purchasing, processing,  
5 analyzing and testing consumer products; litigating matters that result in defaults, bankruptcies,  
6 or dismissals; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's  
7 Voluntary Compliance Program by acquiring products from companies, developing and  
8 maintaining a case file, testing products from these companies, providing the test results and  
9 supporting documentation to the companies, and offering guidance in implementing a self-testing  
10 program for lead in dietary supplement products; (3) "GOT LEAD" PROGRAM (up to 5%):  
11 maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products  
12 that reach California consumers by providing access to free testing for lead in dietary supplement  
13 products (Products submitted to the program are screened for ingredients which are suspected to  
14 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory  
15 for testing, and the results shared with the consumer that submitted the product); (4)  
16 DONATION: from this settlement, a donation of \$5,000.00 to Center For Environmental Health  
17 will be provided to address reducing toxic chemical exposures in California and following up  
18 with the recipient to ensure the funds are utilized in a manner that is consistent with ERC's  
19 mission and stated purpose of the Donation; (5) PUBLIC OUTREACH (up to 5%): public  
20 outreach programs including maintaining ERC's blog, website, and social media accounts; (6)  
21 SPECIAL PROJECTS (10-20%): projects including obtaining expert and legal opinions not  
22 specific to any one case that are necessary to the continued private enforcement of Proposition  
23 65 (7) SCHOLARSHIPS (up to 5%): scholarships for college students in California who have  
24 been or are currently diagnosed with cancer or who are pursuing an environmental health science  
25 major; and (8) PRODUCT DATABASE (up to 5%): maintaining a database with all products  
26 sold to California consumers that ERC has tested for lead, cadmium, or arsenic.

1 ERC will maintain adequate records to document that the funds paid as an ASP are spent on the  
2 activities described herein. ERC shall provide the Attorney General, within thirty days of any  
3 request, copies of documentation demonstrating how such funds have been spent.

4       **4.5**     \$12,324.00 shall be distributed to Lozeau Drury LLP as reimbursement of  
5 ERC's attorney's fees, while \$23,496.90 shall be distributed to ERC for its in-house legal fees.

6       **4.6**     In the event that USANA fails to remit the Total Settlement Payment owed  
7 under Section 4 of this Consent Judgment on or before the Due Date, USANA shall be deemed  
8 to be in material breach of its obligations under this Consent Judgment. ERC shall provide  
9 written notice of the delinquency to USANA via electronic mail. If USANA fails to deliver the  
10 Total Settlement Payment within five (5) days from the written notice, the Total Settlement  
11 Payment shall become immediately due and payable and shall accrue interest at the statutory  
12 judgment interest rate provide in the Code of Civil Procedure section 685.010. Additionally,  
13 USANA agrees to pay ERC's reasonable attorney fees and costs for any efforts to collect the  
14 payment due under this Consent Judgment.

## 15     **5.     MODIFICATION OF CONSENT JUDGMENT**

16       **5.1**     This Consent Judgment may be modified only (i) by written stipulation of the  
17 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
18 judgment.

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

1 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
2 confer period.

3       **5.3** In the event that USANA initiates or otherwise requests a modification under  
4 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
5 Consent Judgment, ERC may seek its costs and reasonable attorney's fees in accordance with  
6 California Code of Civil Procedure section 1021.5 for the time spent in the meet-and-confer  
7 process and filing and arguing the motion or application.

8       **5.4** Where the meet-and-confer process does not lead to a joint motion or application  
9 in support of a modification of the Consent Judgment, then either Party may seek judicial relief  
10 on its own. ERC may seek its costs and reasonable attorney's fees in accordance with California  
11 Code of Civil Procedure section 1021.5 for the time spent in the meet-and-confer process and  
12 filing and arguing the motion or application.

## 13       **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT** 14       **JUDGMENT**

15       **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
16 this Consent Judgment.

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

## 25       **7. APPLICATION OF CONSENT JUDGMENT**

26       This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
28 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,

1 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
2 application to Covered Products which are distributed or sold exclusively to consumers outside the  
3 State of California.

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

5 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
6 on behalf of itself and in the public interest, and USANA and its respective officers, directors,  
7 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates under  
8 common ownership of USANA, suppliers, franchisees, licensees, customers (not including  
9 private label customers of USANA), distributors, wholesalers, retailers, and all other upstream  
10 and downstream entities in the distribution chain of any Covered Product, and the predecessors,  
11 successors and assigns of any of them (collectively, "Released Parties"). ERC hereby fully  
12 releases and discharges the Released Parties from any and all claims, actions, causes of action,  
13 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could  
14 have been asserted from the handling, use, or consumption of the Covered Products, as to any  
15 alleged violation of Proposition 65 or its implementing regulations arising from the failure to  
16 provide Proposition 65 warnings on the Covered Products regarding lead up to and including  
17 the Effective Date.

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

24 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
25 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be  
26 discovered. ERC on behalf of itself only, on one hand, and USANA, on the other hand,  
27 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
28 claims up through the Effective Date, including all rights of action therefore. ERC and USANA

1 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown  
2 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
3 claims. California Civil Code section 1542 reads as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
7 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
8 OR HER SETTLEMENT WITH THE DEBTOR.

9 ERC on behalf of itself only, on the one hand, and USANA, on the other hand, acknowledge  
10 and understand the significance and consequences of this specific waiver of California Civil  
11 Code section 1542.

12 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
13 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures  
14 to lead in the Covered Products as set forth in the Notices and the Complaint.

15 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
16 environmental exposures arising under Proposition 65, nor shall it apply to any of USANA's  
17 products other than the Covered Products.

## 18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

## 21 **10. GOVERNING LAW**

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

## 24 **11. PROVISION OF NOTICE**

25 All notices required to be given to either Party to this Consent Judgment by the other shall  
26 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
27 email may also be sent.  
28

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

2 Chris Heptinstall, Executive Director, Environmental Research Center  
3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Tel: (619) 500-3090  
6 Email: chris\_erc501c3@yahoo.com

7 With a copy to:

8 MICHAEL R. LOZEAU  
9 RICHARD T. DRURY  
10 LOZEAU | DRURY LLP  
11 410 12th Street, Suite 250  
12 Oakland, CA 94607  
13 Ph: 510-836-4200  
14 Fax: 510-836-4205  
15 Email: michael@lozeaudrury.com  
16 richard@lozeaudrury.com  
17 doug@lozeaudrury.com

18 **USANA HEALTH SCIENCES, INC.**

19 Mr. James H. Bramble, Chief Legal Officer  
20 USANA Health Sciences, Inc.  
21 3838 West Parkway Boulevard  
22 Salt Lake City, Utah 84120-6336  
23 Telephone: 801-954-7805  
24 Email: james.bramble@us.usana.com

25 With a copy to:

26 ANN G. GRIMALDI  
27 GRIMALDI LAW OFFICES  
28 50 California Street, Suite 1500  
San Francisco, CA 94111  
Telephone: (415) 463-5186  
Facsimile: (415) 358-4467  
Email: ann.grimaldi@grimaldilawoffices.com

1     **12. COURT APPROVAL**

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

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

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

10     **13. EXECUTION AND COUNTERPARTS**

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

14     **14. DRAFTING**

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

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

24             If a dispute arises with respect to either Party's compliance with the terms of this Consent  
25 Judgment entered by the Court, the Parties shall meet and confer in person or by telephone, and/or  
26 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may  
27 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.  
28

1     **16. ENFORCEMENT**

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

11     **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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



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

**IT IS SO STIPULATED:**

Dated: 12/15/, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Hopfinger, Executive Director

Dated: \_\_\_\_\_, 2016

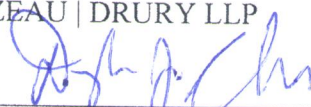
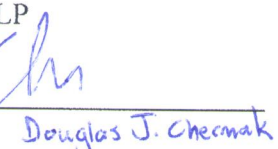
USANA HEALTH SCIENCES, INC.

By:  
Its:

**APPROVED AS TO FORM:**

Dated: 20 December, 2016

LOZEAU | DRURY LLP

By:    
~~Michael R. Lozeau~~ Douglas J. Chernak  
Richard T. Drury  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

Dated: \_\_\_\_\_, 2016

GRIMALDI LAW OFFICES

By: \_\_\_\_\_  
Ann G. Grimaldi  
Attorney for Defendant USANA Health  
Sciences, Inc.

///

///

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

3  
4 **IT IS SO STIPULATED:**

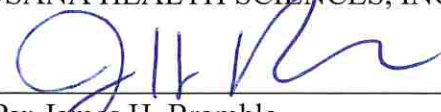
5 Dated: \_\_\_\_\_, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

6  
7 By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

8 Dated: December 6, 2016

USANA HEALTH SCIENCES, INC.

9  
10   
11 By: James H. Bramble  
Its: CLO & Corporate Secretary

12 **APPROVED AS TO FORM:**


13 Dated: \_\_\_\_\_, 2016

LOZEAU | DRURY LLP

14  
15 By: \_\_\_\_\_  
16 Michael R. Lozeau  
17 Richard T. Drury  
18 Attorneys for Plaintiff Environmental  
Research Center, Inc.

19 Dated: December 7, 2016

GRIMALDI LAW OFFICES

20  
21 By:   
22 Ann G. Grimaldi  
23 Attorney for Defendant USANA Health  
Sciences, Inc.

24 ///

25 ///

26 ///

**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



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

**VIA CERTIFIED MAIL**

Current CEO or President  
USANA Health Sciences, Inc.  
3838 West Parkway Boulevard  
Salt Lake City, UT 84120

Corporation Service Company  
(USANA Health Sciences, Inc.'s  
Registered Agent for Service of Process)  
10 East South Temple, Suite 850  
Salt Lake City, UT 84133

Corporation Service Company Which Will  
Do Business in California as CSC-Lawyers  
Incorporating Service  
(USANA Health Sciences, Inc.'s  
Registered Agent for Service of Process)  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

**VIA ELECTRONIC MAIL**

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[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

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1200 Aguajito Road  
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[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

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Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

**VIA ELECTRONIC MAIL**

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732 Brannan Street  
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gregory.alker@sfgov.org

Yen Dang, Supervising Deputy District Attorney  
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EPU@da.sccgov.org

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Sonoma, CA 95403  
jbarnes@sonoma-county.org

**VIA ELECTRONIC MAIL**

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

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

**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 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 name of the Company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**USANA Health Sciences, Inc.**

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

- 1. Usana Health Sciences Inc. Usana Nutrimeal Chocolate Whey- Lead**
- 2. Usana Health Sciences Inc. Usana Fudge Delite - Lead**
- 3. Usana Health Sciences Inc. Usana Nutrimeal Dutch Chocolate - Lead**
- 4. Usana Health Sciences Inc. Usana Nutrimeal French Vanilla - Lead**
- 5. Usana Health Sciences Inc. Usana Nutrimeal Wild Strawberry - Lead**
- 6. Usana Health Sciences Inc. Usana Fibergy Plus - 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 Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator 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 Violator.

The Violator has 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 Violator violated Proposition 65 because it 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 February 19, 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 Violator agrees 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.

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

February 19, 2016

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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,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to USANA Health Sciences, Inc. and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)



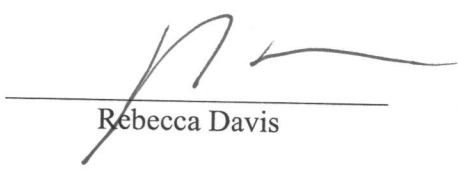
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by USANA Health Sciences, Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party 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 Violator 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: February 19, 2016

  
\_\_\_\_\_  
Rebecca Davis

**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 February 19, 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:

Current CEO or President  
USANA Health Sciences, Inc.  
3838 West Parkway Boulevard  
Salt Lake City, UT 84120

Corporation Service Company  
(USANA Health Sciences, Inc.’s  
Registered Agent for Service of Process)  
10 East South Temple, Suite 850  
Salt Lake City, UT 84133

Corporation Service Company Which Will  
Do Business in California as CSC-Lawyers  
Incorporating Service  
(USANA Health Sciences, Inc.’s  
Registered Agent for Service of Process)  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

On February 19, 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

On February 19, 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](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

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

February 19, 2016

Page 7

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

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

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

Stephan R. Passalacqua, District Attorney  
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Paul E. Zellerbach, District Attorney  
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Riverside, CA 92501  
Prop65@rivcoda.org

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Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

Gregory D. Totten, District Attorney  
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Ventura, CA 93009  
daspecialops@ventura.org

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

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

On February 19, 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 February 19, 2016, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

**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 4<sup>th</sup> 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 18000  
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  
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Post Office Box 730  
Mariposa, CA 95338

District Attorney,  
Mendocino County  
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District Attorney, Merced  
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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  
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Nevada City, CA 95959

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Santa Ana, CA 92701

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Ste 240  
Roseville, CA 95678

District Attorney, Plumas  
County  
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Quincy, CA 95971

District Attorney, San Benito  
County  
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Hollister, CA 95023

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Bernardino County  
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San Bernardino, CA 92415-  
0004

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1300  
San Diego, CA 92101

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Stockton, CA 95202

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Obispo County  
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San Luis Obispo, CA 93408

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Redwood City, CA 94063

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District Attorney, Santa Cruz  
County  
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County  
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County  
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County  
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San Francisco, City Attorney  
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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.<sup>1</sup> 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](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 contaminant<sup>2</sup> 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: February 19, 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: February 19, 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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> 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>.

<sup>2</sup> 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

# EXHIBIT B



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

**VIA CERTIFIED MAIL**

Current CEO or President  
USANA Health Sciences, Inc.  
3838 West Parkway Boulevard  
Salt Lake City, UT 84120

Corporation Service Company  
(USANA Health Sciences, Inc.'s  
Registered Agent for Service of Process)  
10 East South Temple, Suite 850  
Salt Lake City, UT 84133

Corporation Service Company Which Will  
Do Business in California as CSC-Lawyers  
Incorporating Service  
(USANA Health Sciences, Inc.'s  
Registered Agent for Service of Process)  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

**VIA ELECTRONIC MAIL**

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
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Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

October 14, 2016

Page 2

**VIA ELECTRONIC MAIL**

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

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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

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

**VIA ELECTRONIC MAIL**

Stephan R. Passalacqua, District Attorney  
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Phillip J. Cline, District Attorney  
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Gregory D. Totten, District Attorney  
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800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

**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 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 name of the Company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**USANA Health Sciences, Inc.**

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

- 1. USANA Health Sciences Inc. Nutrimeal Free - Lead**
- 2. USANA Health Sciences Inc. MySmartShake Booster Fibergy+ - Lead**
- 3. USANA Health Sciences Inc. MySmartBar Dark Chocolate - Lead**
- 4. USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base - Lead**
- 5. MySmartShakeSystem (Soy,Cappuccino, Protein) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer**
- 6. MySmartShakeSystem (Soy,Peach,Protein) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer**
- 7. MySmartShakeSystem (Soy,Chocolate,Protein) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**
- 8. MySmartShakeSystem (Whey,Chocolate,Protein) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**
- 9. MySmartShakeSystem (Plant,Cappuccino, Protein) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer**
- 10. MySmartShakeSystem (Plant,Orange,Protein) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**

- c) **USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer**
- 11. MySmartShakeSystem (Plant,Banana,Protein) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) **USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer**
- 12. MySmartShakeSystem (Plant,Peach,Protein) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) **USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer**
- 13. MySmartShakeSystem (Plant,Chocolate,Protein) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Performance Booster Protein+**
  - b) **USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**
- 14. MySmartShakeSystem (Soy,Cappuccino, Fiber) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer**
- 15. MySmartShakeSystem (Soy,Orange,Fiber) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer**
- 16. MySmartShakeSystem (Soy,Banana,Fiber) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer**
- 17. MySmartShakeSystem (Soy,Peach,Fiber) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer**
- 18. MySmartShakeSystem (Soy,Chocolate,Fiber) - Lead**
  - a) **USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) **USANA Health Sciences Inc. MySmartShake Soy 1 Vanilla Base**
  - c) **USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**



- 19. MySmartShakeSystem (Whey,Cappuccino, Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer**
- 20. MySmartShakeSystem (Whey,Orange,Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer**
- 21. MySmartShakeSystem (Whey,Banana,Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer**
- 22. MySmartShakeSystem (Whey,Peach,Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer**
- 23. MySmartShakeSystem (Whey,Chocolate,Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Whey 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**
- 24. MySmartShakeSystem (Plant,Cappuccino, Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Cappuccino Flavor Optimizer**
- 25. MySmartShakeSystem (Plant,Orange,Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Orange Cream Flavor Optimizer**
- 26. MySmartShakeSystem (Plant,Banana,Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Banana Flavor Optimizer**
- 27. MySmartShakeSystem (Plant,Peach,Fiber) - Lead**
  - a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
  - b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
  - c) USANA Health Sciences Inc. MySmartShake 2 Peach Mango Flavor Optimizer**

**28. MySmartShakeSystem (Plant,Chocolate,Fiber) - Lead**

- a) USANA Health Sciences Inc. MySmartShake Booster Fibergy+**
- b) USANA Health Sciences Inc. MySmartShake Plant 1 Vanilla Base**
- c) USANA Health Sciences Inc. MySmartShake 2 Chocolate Flavor Optimizer**

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 Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator 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 Violator.

The Violator has 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 Violator violated Proposition 65 because it 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 14, 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 Violator agrees 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.

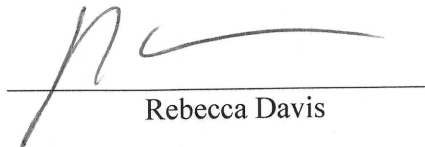
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 14, 2016

Page 7

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,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to USANA Health Sciences, Inc. and its 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 USANA Health Sciences, Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party 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 Violator 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 14, 2016

  
Rebecca Davis

**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 14, 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:

Current CEO or President  
USANA Health Sciences, Inc.  
3838 West Parkway Boulevard  
Salt Lake City, UT 84120

Corporation Service Company  
(USANA Health Sciences, Inc.’s  
Registered Agent for Service of Process)  
10 East South Temple, Suite 850  
Salt Lake City, UT 84133

Corporation Service Company Which Will  
Do Business in California as CSC-Lawyers  
Incorporating Service  
(USANA Health Sciences, Inc.’s  
Registered Agent for Service of Process)  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

On October 14, 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

On October 14, 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](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

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

October 14, 2016

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

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

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

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

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

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

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

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

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

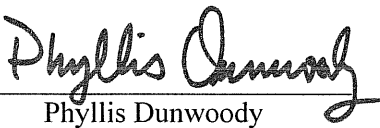
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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

On October 14, 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 October 14, 2016, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

October 14, 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, Suite 202  
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 4<sup>th</sup> 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 18000  
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 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.<sup>1</sup> 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](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 contaminant<sup>2</sup> 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 14, 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: October 14, 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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> 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>.

<sup>2</sup> 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