

1 Michael Freund SBN 99687
Ryan Hoffman SBN 283297
2 Michael Freund & Associates
1919 Addison Street, Suite 105
3 Berkeley, CA 94704
4 Telephone: (510) 540-1992
Facsimile: (510) 540-5543

5
6 Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

7 MELISSA A. JONES SBN 205576
8 BAO M. VU SBN 277970
STOEL RIVES LLP
9 500 Capitol Mall, Suite 1600
Sacramento, CA 95814
10 Telephone: (916) 447-0700
11 Facsimile: (916) 447-4781
Email: melissa.jones@stoel.com
12 bao.vu@stoel.com

13 Attorneys for Defendants
14 MAX 3, LLC and MAXIMIZED LIVING, INC.

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

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

20 **Plaintiff,**

21 **v.**

22 **MAX 3, LLC, MAXIMIZED LIVING,**
23 **INC., and DOES 1-100**

24 **Defendants.**

CASE NO. RG16834961

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 et seq.

Action Filed: October 12, 2016

Trial Date: None set

25
26 **1. INTRODUCTION**

27 **1.1** On October 12, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a
28 non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint (the “Complaint”) for Injunctive and Declaratory Relief and Civil Penalties
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 (“Proposition 65”), against Max 3, LLC, Maximized Living, Inc. (collectively “Maximized
4 Living”), and Does 1-100. In this action, ERC alleges that a number of products manufactured,
5 distributed, or sold by Maximized Living contain lead and/or cadmium, chemicals listed under
6 Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these chemicals
7 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
8 individually as a “Covered Product” or collectively as “Covered Products”) are: 1) “Max 3 LLC
9 Maximized Living Perfect Plant Protein Vanilla”-Lead, (2) “Max 3 LLC Maximized Living Max
10 Greens Chocolate” – Lead, (3) “Max3 LLC Maximized Living Detox System” –Lead, which
11 includes the following products: “Max3 LLC Maximized Living Detox System Cell Detox” and
12 “Max3 LLC Maximized Living Detox System Body Detox”, and (4) Max 3 LLC Maximized
13 Living Grass-Fed Whey Protein Chocolate – Cadmium.

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

16 1.3 ERC is a 501(c)(3) California non-profit corporation dedicated to, among other
17 causes, helping safeguard the public from health hazards by reducing the use and misuse of
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
19 and encouraging corporate responsibility.

20 1.4 Solely for purposes of this Consent Judgment, the Parties agree that each defendant
21 qualifies as a “person in the course of business” within the meaning of Proposition 65. Maximized
22 Living manufactures, distributes, and/or sells the Covered Products.

23 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation
24 dated June 29, 2016 that was served on the California Attorney General, other public enforcers,
25 and Maximized Living (“Notice”). A true and correct copy of the 60-Day Notice is attached
26 hereto as **Exhibit A** and is incorporated herein by reference. More than 60 days have passed
27 since the Notice was served on the Attorney General, public enforcers, and Maximized Living
28 and no designated governmental entity has filed a complaint against Maximized Living with

1 regard to the Covered Products or the alleged violations.

2 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
3 persons in California to lead and/or cadmium without first providing clear and reasonable
4 warnings in violation of California Health and Safety Code section 25249.6. Maximized Living
5 denies all material allegations contained in the Notice and Complaint.

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

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

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

21 **2. JURISDICTION AND VENUE**

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

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

2 **3.1** Beginning on the Effective Date, Maximized Living shall be permanently
3 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
4 California”, or directly selling in the State of California, any Covered Products which exposes a
5 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
6 “Daily Cadmium Exposure Level” of more than 4.10 micrograms of cadmium per day unless it
7 meets the warning requirements under Section 3.2.

8 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
9 of California” shall mean to directly ship a Covered Product into California for sale in
10 California or to sell a Covered Product to a distributor that Maximized Living knows or has
11 reason to know will sell the Covered Product in California.

12 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
13 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
14 calculated using the following formula: micrograms of lead or cadmium per gram of product,
15 multiplied by grams of product per serving of the product (using the largest serving size
16 appearing on the product label), multiplied by servings of the product per day (using the largest
17 number of servings in a recommended dosage appearing on the product label, or multiplied by
18 one (1) if there is no recommended servings of the product per day), which equals micrograms
19 of lead or cadmium exposure per day.

20 **3.2 Clear and Reasonable Warnings**

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

23 **WARNING:** This product can expose you to chemicals including [lead][and][cadmium]
24 which is [are] known to the State of California to cause [cancer and] birth defects or other
reproductive harm. For more information got to www.P65Warnings.ca.gov.

25 Maximized Living shall use the phrase “cancer and” in the Warning only if the “Daily Lead
26 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
27 control methodology set forth in Section 3.4. As identified in the brackets, the warning shall
28 appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the

1 Covered Products.

2 The Warning shall be securely affixed to or printed upon the container or label of each
3 Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall
4 appear prior to to purchase when a California delivery address is indicated for any purchase of
5 any Covered Product. An asterisk or other identifying method must be utilized to identify which
6 products on the checkout page are subject to the Warning.

7 The Warning shall be at least the same size as the largest of any other health or safety
8 warnings also appearing on its website or on the label or container of Maximized Living's product
9 packaging and the word "WARNING" shall be in all capital letters and in bold print. No
10 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
11 clarity of, the Warning on the average lay person may directly precede or follow the warning.

12 Maximized Living must display the above Warning with such conspicuousness, as
13 compared with other words, statements, design of the label, container, or on its website, as
14 applicable, to render the Warning likely to be read and understood by an ordinary individual under
15 customary conditions of purchase or use of the product.

16 **3.3 Reformulated Covered Products**

17 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
18 greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more
19 than 4.10 micrograms of cadmium per day as determined by the quality control methodology
20 described in Section 3.4.

21 **3.4 Testing and Quality Control Methodology**

22 **3.4.1** Beginning within one year of the Effective Date, Maximized Living shall
23 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
24 minimum of three consecutive years by arranging for testing of five randomly selected samples
25 of each of the Covered Products, in the form intended for sale to the end-user, which
26 Maximized Living intends to sell or is manufacturing for sale in California, directly selling to a
27 consumer in California or "Distributing into the State of California." If tests conducted
28 pursuant to this Section demonstrate that no Warning is required for a Covered Product during

1 each of five consecutive years, then the testing requirements of this Section will no longer be
2 required as to that Covered Product.

3 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” and/or
4 “Daily Cadmium Exposure Level,” the arithmetic mean of test results for the five (5) randomly
5 selected samples, pursuant to Section 3.4.1 will be controlling.

6 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
7 laboratory method that complies with the performance and quality control factors appropriate
8 for the method used, including limit of detection, qualification, accuracy, and precision that
9 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
10 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
11 method subsequently agreed to in writing by the Parties and approved by the Court through
12 entry of a modified consent judgment.

13 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
14 independent third party laboratory certified by the California Environmental Laboratory
15 Accreditation Program or an independent third-party laboratory that is registered with the
16 United States Food & Drug Administration.

17 **3.4.5** Nothing in this Consent Judgment shall limit Maximized Living’s ability
18 to conduct, or require that others conduct, additional testing of the Covered Products, including
19 the raw materials used in their manufacture.

20 **3.4.6** Maximized Living shall retain all test results and documentation for a
21 period of five years from the date of each test.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney’s fees, and costs, Maximized Living shall make a total payment of \$95,000.00 (“Total
25 Settlement Amount”) to ERC on a payment schedule consisting of five consecutive monthly
26 payments of \$15,833.33 and a final payment of \$15,833.35. The first payment shall be due and
27 owing within 5 days of the Effective Date and each successive payment shall follow in 30 day
28 increments from the Effective Date (“Due Date”). Maximized Living shall make this payment

1 by wire transfer to ERC's escrow account, for which ERC will give Maximized Living the
2 necessary account information. The Total Settlement Amount shall be apportioned as follows:

3 **4.2** \$32,439.40 shall be considered a civil penalty pursuant to California Health and
4 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$24,329.55) of the civil penalty to
5 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
6 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
7 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,109.85) of the civil penalty.

8 **4.3** \$3,996.95 shall be distributed to ERC as reimbursement to ERC for reasonable
9 costs incurred in bringing this action.

10 **4.4** \$24,329.52 shall be distributed to ERC as an Additional Settlement Payment
11 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
12 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
13 caused by Defendant in this matter. These activities are detailed below and support ERC's
14 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
15 supplement products in California. ERC's activities have had, and will continue to have, a direct
16 and primary effect within the State of California because California consumers will be benefitted
17 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
18 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
19 the products.

20 Based on a review of past years' actual budgets, ERC is providing the following
21 list of activities ERC engages in to protect California consumers through Proposition 65 citizen
22 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
23 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
24 supplement products that may contain lead and/or cadmium and are sold to California
25 consumers. This work includes continued monitoring and enforcement of past consent judgments
26 and settlements to ensure companies are in compliance with their obligations thereunder, with a
27 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
28 also includes investigation of new companies that ERC does not obtain any recovery through

1 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-25%): maintaining
2 ERC's Voluntary Compliance Program by acquiring products from companies, developing and
3 maintaining a case file, testing products from these companies, providing the test results and
4 supporting documentation to the companies, and offering guidance in warning or implementing a
5 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT
6 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
7 numbers of contaminated products that reach California consumers by providing access to free
8 testing for lead in dietary supplement products (Products submitted to the program are screened
9 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
10 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
11 that submitted the product).

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

17 **4.5** \$13,865.00 shall be distributed to Michael Freund as reimbursement of ERC's
18 attorney's fees, \$82.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's
19 attorney's fees, while \$20,286.63 shall be distributed to ERC for its in-house legal fees. Except
20 as explicitly provided herein, each Party shall bear its own fees and costs.

21 **4.6** In the event that Maximized Living fails to remit the Total Settlement Payment
22 owed under Section 4 of this Consent Judgment on or before the Due Date, Maximized Living
23 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
24 shall provide written notice of the delinquency to Maximized Living via electronic mail. If
25 Maximized Living fails to deliver the Total Settlement Payment within five (5) days from the
26 written notice, the Total Settlement Payment shall accrue interest at the statutory judgment
27 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
28 Maximized Living agrees to pay ERC's reasonable attorney's fees and costs for any efforts to

1 collect the payment due under this Consent Judgment.

2 **5. MODIFICATION OF CONSENT JUDGMENT**

3 **5.1** In the event that Proposition 65 is amended or its implementing regulations are
4 modified as to the safe harbor language currently set forth in California Code of Regulations,
5 title 27, section 25603.2 or the No Significant Risk Levels and Specific Regulatory Levels set
6 forth in California Code of Regulations, title 27, sections 25705 and 25805, Maximized
7 Living's compliance with the successor language constitutes compliance with this Consent
8 Judgment.

9 **5.2** Unless Section 5.1 applies, this Consent Judgment may be modified only as to
10 injunctive terms (i) by written stipulation of the Parties or pursuant to Section 5.5 and (ii) upon
11 entry by the Court of a modified consent judgment.

12 **5.3** If Maximized Living seeks to modify this Consent Judgment under Section 5.2,
13 then Maximized Living must provide written notice to ERC of its intent ("Notice of Intent"). If
14 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
15 ERC must provide written notice to Maximized Living within thirty (30) days of receiving the
16 Notice of Intent. If ERC notifies Maximized Living in a timely manner of ERC's intent to meet
17 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
18 Parties shall meet in person or via telephone within thirty (30) days of ERC's notification of its
19 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
20 proposed modification, ERC shall provide to Maximized Living a written basis for its position.
21 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
22 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
23 to different deadlines for the meet-and-confer period.

24 **5.4** In the event that Maximized Living initiates or otherwise requests a modification
25 under Section 5.2, and the meet and confer process leads to a joint motion or application of the
26 Consent Judgment, Maximized Living shall reimburse ERC its costs and reasonable attorney's
27 fees for the time spent in the meet-and-confer process and filing and arguing the motion or
28 application.

1 **5.5** Where the meet-and-confer process does not lead to a joint motion or
2 application in support of a modification of the Consent Judgment, then either Party may seek
3 judicial relief on its own.

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

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

8 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
9 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
10 inform Maximized Living in a reasonably prompt manner of its test results, including
11 information sufficient to permit Maximized Living to identify the Covered Products at issue.
12 Maximized Living shall, within thirty (30) days following such notice, provide ERC with
13 testing information, from an independent third-party laboratory meeting the requirements of
14 Sections 3.4.3 and 3.4.4, demonstrating Maximized Living's compliance with the Consent
15 Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking
16 any further legal action.

17 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

25 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
26 on behalf of itself and in the public interest, and Maximized Living and its respective officers,
27 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
28 franchisees, licensees, customers (not including private label customers of Maximized Living),

1 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
2 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
3 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the
4 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
5 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from
6 the handling, use, or consumption of the Covered Products, as to any alleged violation of
7 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
8 65 warnings on the Covered Products regarding lead and/or cadmium up to and including the
9 Effective Date.

10 **8.2** ERC on its own behalf only, and Maximized Living on its own behalf only,
11 further waive and release any and all claims they may have against each other for all actions or
12 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
13 65 in connection with the Notice and Complaint up through and including the Effective Date,
14 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
15 enforce the terms of this Consent Judgment.

16 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
17 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
18 discovered. ERC on behalf of itself only, and Maximized Living on behalf of itself only,
19 acknowledge that this Consent Judgment is expressly intended to cover and include all such
20 claims up through and including the Effective Date, including all rights of action therefore.
21 ERC and Maximized Living acknowledge that the claims released in Sections 8.1 and 8.2
22 above may include unknown claims, and nevertheless waive California Civil Code section
23 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
28 OR HER SETTLEMENT WITH THE DEBTOR.

1 ERC on behalf of itself only, and Maximized Living on behalf of itself only, acknowledge and
2 understand the significance and consequences of this specific waiver of California Civil Code
3 section 1542.

4 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
6 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

7 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any of Maximized
9 Living's products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

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

21 Chris Heptinstall, Executive Director, Environmental Research Center
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
24 Tel: (619) 500-3090
25 Email: chris_erc501c3@yahoo.com

26 With a copy to:
27 Michael Freund
28 Ryan Hoffman
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992

1 Facsimile: (510) 540-5543
2 Email: freundl@aol.com

3 MAX 3, LLC and MAXIMIZED LIVING, INC.
4 Mark Bole, CEO
5 1170 Celebration Blvd.
6 Celebration FL 34747
7 Email:

8 With a copy to:
9 MELISSA A. JONES
10 BAO M. VU
11 STOEL RIVES LLP
12 500 Capitol Mall, Suite 1600
13 Sacramento, CA 95814
14 Telephone: (916) 447-0700
15 Facsimile: (916) 447-4781
16 Email: melissa.jones@stoel.com
17 bao.vu@stoel.com

12. COURT APPROVAL

13 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
15 Consent Judgment.

16 12.2 If the California Attorney General objects to any term in this Consent Judgment,
17 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
18 prior to the hearing on the motion.

19 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
20 void and have no force or effect.

21 13. EXECUTION AND COUNTERPARTS

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

25 14. DRAFTING

26 The terms of this Consent Judgment have been reviewed by the respective counsel for each
27 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
28

1 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
2 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
3 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
4 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
5 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
6 equally in the preparation and drafting of this Consent Judgment.

7 **15. ENFORCEMENT**

8 **15.1** No party may apply to the Court to enforce this Consent Judgment, unless that
9 Party has first provided written notice to the other Party of any alleged violations of this
10 Consent Judgment. Additionally, the Parties agree to meet and confer to resolve any alleged
11 violations of this Consent Judgment, and further agree not to apply to the Court to enforce this
12 Consent Judgment until 30 days after service of the written notice required under this
13 provision.

14 **16. ENTIRE AGREEMENT, AUTHORIZATION**

15 **16.1** This Consent Judgment contains the sole and entire agreement and
16 understanding of the Parties with respect to the entire subject matter herein, and any and all
17 prior discussions, negotiations, commitments, and understandings related hereto. No
18 representations, oral or otherwise, express or implied, other than those contained herein have
19 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
20 herein, shall be deemed to exist or to bind any Party.

21 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
22 authorized by the Party he or she represents to stipulate to this Consent Judgment.

23 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
24 **CONSENT JUDGMENT**

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

28 (1) Find that the terms and provisions of this Consent Judgment represent a fair and

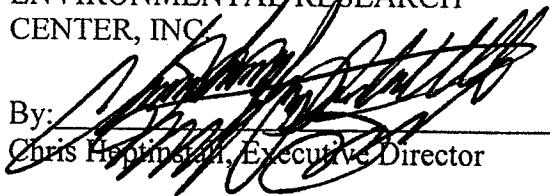
1 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
2 been diligently prosecuted, and that the public interest is served by such settlement; and

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

5
6 **IT IS SO STIPULATED:**

7
8 Dated: 12/27/, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC

By: 
Chris Hopkinson, Executive Director


9
10
11 Dated: 12.30, 2016

MAX 3, LLC

By: 
Mark Bole, CEO

12
13
14
15 Dated: 12.30, 2016


MAXIMIZED LIVING, INC.

By: 
Mark Bole, CEO

16
17
18
19
20 **APPROVED AS TO FORM:**

21 Dated: 12/30/, 2016

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund
Ryan Hoffman
Attorney for Plaintiff Environmental
Research Center, Inc.

1 Dated: 12/30, 2016

STOEL RIVES LLP

2 By: 

3 Melissa A. Jones

4 Bao M. Vu

5 Attorneys for Defendant Max 3, LLC
and Maximized Living, Inc.

6 **ORDER AND JUDGMENT**

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

9 IT IS SO ORDERED, ADJUDGED AND DECREED.

10
11 Dated: _____, 2016

12 Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

June 29, 2016

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

**Max 3, LLC
Maximized Living, Inc.**

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

1. **Max 3 LLC Maximized Living Perfect Plant Protein Vanilla – Lead**
2. **Max 3 LLC Maximized Living Max Greens Chocolate - Lead**
3. **Max3 LLC Maximized Living Detox System -Lead**
 - a. **Max3 LLC Maximized Living Detox System Cell Detox**
 - b. **Max3 LLC Maximized Living Detox System Body Detox**
4. **Max 3 LLC Maximized Living Max Kids Detox Powder – Lead**
5. **Max 3 LLC Maximized Living Grass-Fed Whey Protein Chocolate - Cadmium**

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.

June 29, 2016

Page 2

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 29, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Max 3, LLC, Maximized Living, Inc., and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Max 3, LLC and Maximized Living, Inc.

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: June 29, 2016



Michael Freund

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On June 29, 2016, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Max 3, LLC
1170 Celebration Boulevard, Suite 100B
Celebration, FL 34747

Current President or CEO
Maximized Living, Inc.
3600 Commerce Boulevard
Kissimmee, FL 34741

Current President or CEO
Maximized Living, Inc.
1170 Celebration Boulevard, Suite 100B
Celebration, FL 34747

Current President or CEO
Max 3, LLC
3600 Commerce Boulevard
Kissimmee, FL 34741

Current President or CEO
Maximized Living, Inc.
1420 Celebration Boulevard, Suite 200
Kissimmee, FL 34747

Ben Lerner
(Maximized Living, Inc.'s Registered Agent for
Service of Process)
1170 Celebration Boulevard, Suite 100B
Celebration, FL 34747

Current President or CEO
Max 3, LLC
1575 North Lockwood Ridge Road
Sarasota, FL 34237

Ben Lerner
(Max 3, LLC's Registered Agent for
Service of Process)
1170 Celebration Boulevard, Suite 100B
Celebration, FL 34747

On June 29, 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 June 29, 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:

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

June 29, 2016

Page 5

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

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

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

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

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

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

Gregory Alker, Assistant District Attorney
San Francisco County
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
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

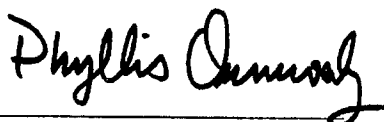
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
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

On June 29, 2016, I served the following documents: **NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on June 29, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

June 29, 2016

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Shasta County 1355 West Street Redding, CA 96001	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301			

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations

(<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

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

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

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

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

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

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

The notice is reproduced here:

Date: June 29, 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: June 29, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108
Phone number: 619-500-3090

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

Certification of Compliance

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

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

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

Certification

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

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .

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

Revised: May 2014

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

² See Section 25501(a)(4).

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

HISTORY

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

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

27 CCR Appendix A, 27 CA ADC Appendix A