

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

SETTLEMENT AGREEMENT

1. PARTIES

1.1 The parties to this Settlement Agreement (“Agreement”) are Consumer Advocacy Group, Inc. (“CAG”) on the one hand, and Daymar Corporation dba Daymar Select Fine Coffees (“Daymar”) on the other. CAG and Daymar are referred to collectively as the “Parties” and each of them as a “Party.”

1.2 CAG is an organization with its principal place of business in California, acting as a citizen enforcer of California Health and Safety Code § 25249.5 *et seq.* (“Proposition 65”).

1.3 Daymar is a California corporation employing ten (10) or more persons and, for the purpose of Proposition 65, is a person doing business in California.

2. ALLEGATIONS

2.1 On or about June 30, 2016, CAG served a 60-Day Notice of Violation under Proposition 65 to Daymar, Fresh Food Ranch Market, Café El Marino, and to the California Attorney General, County District Attorneys, and City Attorneys for each California city containing a population of at least 750,000 people in whose jurisdictions the alleged violations allegedly occurred (“Notice”). The Notice alleged that Daymar and the other parties named in the Notice caused consumer product exposures in violation of Proposition 65 by producing or making available instant coffee containing lead, including “Café Coffee”; “El Marino®”; “Desde 1950”; “Tradición Que Consolida”; “El Marino®” “Net Wt. 7.05 oz (200g) Instant Coffee Granulated”; “En Cualquier Ocasión”; UPC:6 60347 11002 4 (“Instant Coffee”).

2.2 Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, and/or other reproductive harm.

2.3 The products that are covered by this Agreement are all Instant Coffee products manufactured, distributed, supplied, sold, or offered for sale in California by Daymar and which products may be manufactured, distributed, supplied, sold, or offered for sale in California under Daymar’ respective brands or downstream customer private labels (“Covered Products”).

2.4 Daymar denies the material, factual, and legal allegations contained in the Notice,

1 and maintains that all Covered Products that it has manufactured, distributed, supplied, sold,
2 and/or offered for sale in California have been and are in compliance with all laws, including
3 Proposition 65.

4 2.5 The Parties have expended effort and resources in investigating and evaluating
5 the allegations set forth in the Notices, including exchanging information regarding the Covered
6 Products and engaging in a negotiation and technical dialogue regarding settlement.

7 2.6 To avoid prolonged and costly litigation, the Parties therefore enter into this
8 Agreement to resolve and settle all Proposition 65 claims concerning the Covered Products,
9 including without limitation any disputes, obligations, claims and/or causes of action that were or
10 could have been asserted by CAG with respect to such matters.

11 2.7 This Agreement is the direct result of a compromise of disputed allegations and
12 claims. As such, it is the Parties' intent that nothing in this Agreement shall be construed as an
13 admission by any Party of any fact, conclusion of law, issue of law, or violation of law, nor shall
14 compliance with this Agreement constitute or be construed as an admission by any Party of any
15 fact, conclusion of law, issue of law, or violation of law.

16 2.8 Except as otherwise expressly provided herein, nothing in this Agreement shall
17 prejudice, waive or impair any right, remedy, argument or defense any Party may have in any
18 other legal proceeding.

19 **3. EFFECTIVE DATE**

20 3.1 The Effective Date of this Agreement shall be the date on which this Agreement
21 is fully executed by the Parties.

22 **4. INJUNCTIVE RELIEF**

23 4.1 Reformulation Commitment.

24 4.1.1 *Instant Coffee.* Commencing ninety (90) calendar days after the Effective
25 Date, Daymar shall not manufacture, distribute, supply, sell, or offer for sale, in California any
26 Instant Coffee product, unless such Instant Coffee product is a Reformulated Product as set forth
27 in Section 4.2.1.

28

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

Yeroushalmi & Yeroushalmi
9100 Wilshire Boulevard
Suite 240W
Beverly Hills, California 90212

5.3 Except as otherwise provided in Section 5.1 above and Section 10.3 below, the Parties agree to bear their own costs and attorney's fees in connection with the preparation and execution of this Agreement.

6. CAG'S RELEASE OF ALL CLAIMS

6.1 This Agreement is a full, final, and binding resolution between (a) CAG on behalf of CAG, and (b)(i) Daymar, and Daymar's respective shareholders, members, parents, divisions, subdivisions, subsidiaries, partners, and affiliated entities, including without limitation Café El Marino S.A. de CV and Industrias Marino S.A. de C.V., and their respective directors, officers, employees, attorneys, and any and all successors and assigns (collectively, "Releasees"), and (ii) all entities to which Releasees directly or indirectly distribute or sell the Covered Products, or have directly or indirectly distributed or sold the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, owners, purchasers, users, and their respective parent companies, subsidiaries, corporate affiliates, and all entities with which a Releasee may co-manufacture the Covered Products (collectively, "Downstream Releasees"), regarding any violations or alleged violations of Proposition 65 that have or could have been asserted against Releasees and/or Downstream Releasees, with respect to the failure to warn about exposures to lead from any Covered Products manufactured, distributed, supplied, sold or offered for sale by Releasees or Downstream Releasees.

6.2 CAG, acting on its own behalf, releases Releasees and Downstream Releasees from all claims for violations or alleged violations of Proposition 65 prior to the Effective Date based on exposures to lead from any Covered Products manufactured, distributed, supplied, sold or offered for sale by Releasees or Downstream Releasees.

6.3 In further consideration of the promises and agreements herein contained, CAG, on its own behalf, and on behalf of its past and current agents, representatives, attorneys,

1 successors, predecessors, and/or assigns, hereby waives and releases any right to institute or
2 participate in, directly or indirectly, any form of legal action and releases all claims that it may
3 have, including without limitation, all actions and causes of action in law and/or in equity, all
4 suits, costs, fines, penalties, losses, or expenses, including but not exclusively, investigation fees,
5 expert fees, and attorneys' fees, liabilities, obligations, and demands of any nature, whether known
6 or unknown, suspected or unsuspected, arising out of alleged or actual exposures to lead contained
7 in the Covered Products manufactured, distributed, supplied, sold, and/or offered for sale by
8 Daymar before the Effective Date. CAG has full knowledge of section 1542 of the California
9 Civil Code, and acknowledges that the claims released in this section 6.3 may include unknown
10 claims and waives Civil Code section 1542 as to any such unknown claims. Section 1542 reads as
11 follows:

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

16 CAG acknowledges and understands the significance and consequences of this specific waiver of
17 California Civil Code section 1542. The release in this section shall have no force or effect with
18 respect to Daymar until the full amount of payments set forth in Exhibit B are paid in full.

19 6.4 The Parties agree that material compliance with the terms of this Agreement
20 constitutes compliance with Proposition 65 by any Releasee or Downstream Releasee with respect
21 to any alleged failure to warn about lead in the Covered Products manufactured, distributed,
22 supplied, sold, and/or offered for sale by Daymar after the Effective Date.

23 6.5 Liability for Covered Products that were manufactured, distributed, supplied,
24 sold, and/or offered for sale in California prior to the Effective Date shall be subject to the release
25 of liability set forth in this Section 6, without regard to when such Covered Products were, or are
26 in the future, sold to customers or users.

27
28

1 **7. DAYMAR RELEASE OF CAG**

2 7.1 Daymar waives any and all claims against CAG, and its attorneys, consultants,
3 and representatives, for any and all actions or statements made or undertaken by CAG in the
4 course of this action or otherwise seeking enforcement of Proposition 65 against them in this
5 matter, and/or with respect to the Covered Products.

6 **8. PUBLIC BENEFIT**

7 8.1 It is the Daymar' understanding that the commitments agreed to herein, and
8 actions to be taken by Daymar under this Agreement, confer a significant benefit to the general
9 public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11,
10 section 3201. As such, it is the intent of Daymar that to the extent any other private party initiates
11 an action alleging a violation of Proposition 65 with respect to Daymar's failure to provide a
12 warning concerning exposure to lead with respect to the Covered Products it has distributed, sold,
13 or offered for sale in California, or will distribute, sell, or offer for sale in California, such
14 distribution or sale within the scope of this Agreement, such private party action would not confer
15 a significant benefit on the general public as to those Covered Products addressed in this
16 Settlement Agreement, provided that Daymar is in material compliance with this Settlement
17 Agreement.

18 **9. NOTICES**

19 9.1 All notices, requests, demands and other correspondence (collectively, "Section 9
20 Notice") that the Parties are required or desire to serve upon or deliver to the other Party(ies) shall
21 be in writing and sent by first class mail (certified and return receipt requested), overnight courier
22 services, or electronic mail as follows:

23 For Consumer Advocacy Group:

24 Reuben Yeroushalmi
25 Yeroushalmi & Yeroushalmi
26 9100 Wilshire Boulevard
27 Suite 240W
28 Beverly Hills, California 90212
reuben@yeroushalmi.com

1 For the Daymar Corporation:

2 Daymar Corporation
3 dba Daymar Select Fine Coffees
4 460 Cypress Ln Ste B
5 El Cajon, CA 92020

6 With a copy to:

7 Joshua A. Bloom
8 Meyers, Nave, Riback, Silver & Wilson
9 555 12th Street, Suite 1500
10 Oakland, CA 94607
11 j bloom@meyersnave.com

12 9.2 Any Section 9 Notice sent by first class mail shall be deemed received five (5)
13 calendar days after the date of mailing. Any Notice sent by electronic mail shall be deemed
14 received upon electronic transmission thereof, provided sender does not receive an electronic
15 notice of non-delivery. Any Section 9 Notice sent by overnight courier service shall be deemed
16 received on the day of actual delivery as shown by the confirmation of delivery by the messenger
17 or courier service. If the date of receipt of any Section 9 Notice to be given hereunder falls on a
18 weekend or legal holiday, then such date of receipt shall be automatically extended to the next
19 business day.

20 9.3 The foregoing addresses may be changed by Section 9 Notice given in
21 accordance with this Section 9 without requiring modification of the Agreement pursuant to
22 Section 15.

23 10. DISPUTE RESOLUTION/ENFORCEMENT

24 10.1 Notice of Settlement Agreement Violation. If CAG alleges a violation of this
25 Agreement by Daymar, it shall serve notice of such alleged violation (“NOV”) on Daymar. At a
26 minimum, the NOV shall specify the Covered Product alleged to contain lead levels above the
27 reformulation level set forth in section 4.2.1, and include a copy of the test results obtained that
28 form the basis of CAG’s allegations, the test methodology used, and specify in detail any
modification to accepted testing methodologies. CAG shall also provide to Daymar a split sample
of the Covered Product from the same container from which the CAG sample was drawn.

10.2 Dispute Resolution Procedure. In the event that CAG serves an NOV on

1 Daymar, or in the event of any other dispute between the Parties arising out of this Consent
2 Judgment, the Parties shall meet and confer in an attempt to resolve the dispute informally.
3 Should such attempts at informal resolution fail, the disputing party may, by motion or application
4 for an order to show cause before a court of competent jurisdiction, file a motion or application to
5 enforce the terms of this Agreement, provided, however, that no action by CAG to enforce this
6 Agreement may be commenced until at least ninety (90) days after CAG serves Daymar with an
7 NOV.

8 10.3 Prevailing Party Fees and Costs. In the event that any Party files a motion or
9 application to enforce the terms of this Agreement, the prevailing party in such action shall be
10 entitled to recover from the other non-prevailing Party to the action its reasonable attorney's fees
11 and costs incurred as a result of such motion or application. This Agreement may only be
12 enforced by the Parties.

13 11. SUCCESSORS AND ASSIGNS

14 11.1 This Agreement shall be binding upon and inure to the benefit of the Parties
15 hereto and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns
16 of any of them.

17 12. GOVERNING LAW

18 12.1 The terms of this Agreement shall be governed by the laws of the State of
19 California.

20 12.2 In the event that Proposition 65 is repealed or otherwise rendered inapplicable or
21 limited by reason of law generally, as to Daymar specifically as a result of a statutory exemption,
22 or as to any of the Covered Products, then Daymar may provide written notice to CAG of any
23 asserted change in the law, or its applicability to Daymar or the Covered Products, and Daymar
24 shall have no further obligations pursuant to this Agreement to the extent that Daymar or the
25 Covered Products are so affected. Furthermore, to the extent that the maximum available dose
26 level(s) and/or no significant risk level(s) for lead is/are decreased from levels applicable as of the
27 Effective Date, such decrease shall have no effect on, or otherwise act to revise, the standards set
28

1 forth in Section 4.2 herein for the establishment of Reformulated Products.

2 **13. DRAFTING AND INTERPRETATION**

3 13.1 This Agreement is a result of the joint efforts of the Parties. The Parties,
4 including their counsel, have each been given a full opportunity to participate in the preparation of
5 this Agreement. Each of the Parties agrees and represents that no promise, inducement or
6 agreement not expressed in this Agreement has been made to effectuate this Agreement. The
7 Parties' counsel have reviewed and approved this Agreement. Accordingly, the rule of
8 construction that any ambiguities are to be resolved against the drafting party shall not be
9 employed in the interpretation of this Agreement.

10 **14. SEVERABILITY**

11 14.1 In the event that any of the provisions of this Agreement are held by a court to be
12 unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected,
13 but only to the extent the deletion of the provision deemed unenforceable does not materially
14 affect or otherwise result in the effect of the Agreement being contrary to the Parties' intent of
15 entering into this Agreement.

16 **15. MODIFICATION**

17 15.1 This Agreement or any of its provisions may be modified only by express written
18 agreement of the Parties, or by an order of a court of competent jurisdiction upon motion and in
19 accordance with law.

20 15.2 A Party seeking to modify this Agreement through a court order shall attempt in
21 good faith to meet and confer with all affected Parties prior to filing a motion to modify the
22 Agreement.

23 **16. ENTIRE AGREEMENT**

24 16.1 This Agreement contains the entire integrated agreement and understanding of
25 the Parties and supersedes any and all prior written or oral agreements, negotiations, commitments
26 or understandings concerning the subject matter of this Agreement.

27
28

1 17. COUNTERPARTS

2 17.1 This Agreement may be executed in counterparts, each of which shall be deemed
3 an original, and all of which, when taken together, shall constitute one and the same document.

4 18. AUTHORIZATION

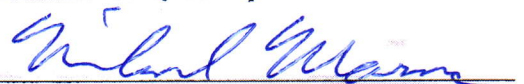
5 18.1 The undersigned hereby represent and warrant that they are authorized to execute
6 this Agreement on behalf of the entity or individual for which they are signing and may bind that
7 entity or individual to the promises and obligations of this Agreement.

8 19. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)

9 19.1 CAG agrees to comply with the reporting form requirements referenced in
10 California Health and Safety Code Section 25249.7(f).

11 DATED: September 30, 2016

Consumer Advocacy Group

12 By: 

13 Print Name: Michael Marcus

14 Title: Director

15
16
17 DATED: September 28, 2016

Daymar Corporation dba Daymar Select Fine Coffees

18 By: 

19 Print Name: Rogelio Gallegas

20 Title: COO

21
22
23
24
25
26
27
28

EXHIBIT A

[60-DAY NOTICES ATTACHED]

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

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING
WATER AND TOXIC ENFORCEMENT ACT OF 1986
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

June 30, 2016

Current President/ CEO
Fresh Food Ranch Market
23501 South Avalon Blvd.
Carson, CA 90745

Roy Gaggegos, Owner,
or Current President/CEO
Daymar Corporation
dba Daymar Select Fine Coffees
460 Cypress Ln Ste B
El Cajon, CA 92020

Current President/CEO
Café El Marino
Carretera Internacional
Km. 1193.5 al Sur. Col. Anáhuac
Mazatlán, Sinaloa, México
CP 82188

Current President/CEO
Café El Marino
Carretera Internacional
Km. 1192 al Sur. Col. Anáhuac
Mazatlán, Sinaloa, México.
CP 82180

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Coffee Products Containing Lead and Lead
compounds (“Lead”)**

To whom else this may concern:

Consumer Advocacy Group, Inc. (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on Fresh Food Ranch Market, Daymar Corporation, and Café El Marino, (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the consumer environment, improving human health, and supporting environmentally sound commercial practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical

known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code* § 25249.6.

- CAG has discovered **Coffee Products**, specifically, **Instant Coffee (“Coffee”)** containing **Lead**, which is known to the State of California to cause both cancer and reproductive toxicity, developmental, female, male. On February 27, 1987, the Governor of California added **Lead** to the list of chemicals known to the State to cause reproductive toxicity, developmental, female, male, and on October 1, 1992, the Governor added **Lead and Lead compounds** to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served this Notice.
 - An exemplar of the violations caused by **Coffee** includes but is not limited to:
 - “Café Coffee”; “El Marino®”; “Desde 1950”; “Tradición Que Consolida”; “El Marino®” “Net Wt. 7.05 oz (200g) Instant Coffee Granulated”; “En Cualquier Ocasión”; www.cafemarino.com.mx; “Distribuido por:/ Distributed by: Daymar Corp. El Cajon, CA 92020”; “Product of Mexico”; UPC:6 60347 11002 4
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.* 27 tit. § 25602(b).

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Coffee** for distribution or sale in California to consumers. The packaging for **Coffee** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to **Coffee**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **Coffee**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

These violations occurred each day between June 30, 2013 and June 30, 2016, and are ever continuing thereafter.

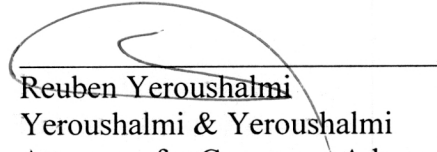
The principal routes of exposure with regard to **Coffee** are and were through ingestion, including direct (oral), hand to mouth pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by eating and consuming **Coffee**, handling **Coffee** without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling **Coffee** as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from **Coffee**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged

violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. See *Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: Jun 30/16


Reuben Yeroushalmi
Yeroushalmi & Yeroushalmi
Attorneys for Consumer Advocacy Group, Inc.

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.

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:

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>.

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 full and part-time 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 a 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.

2 See Section 25501(a)(4)

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 or any reimbursement for costs and attorney's fees, if the notice of violation 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 \$500 (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 greater than 750,000 in 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:
Name of Noticing Party or attorney for Noticing Party:
Address:
Phone number:

**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:
Name of Noticing Party or attorney for Noticing Party:
Address:
Phone number:

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 showing 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

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.

Coffee Products containing Lead

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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 30/16

By: Reuben Yeroushalmi

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

Name and address of each party to whom documents were mailed:

Current President/ CEO
Fresh Food Ranch Market
23501 South Avalon Blvd.
Carson, CA 90745

Roy Gaggegos, Owner,
or Current President/CEO
Daymar Corporation
dba Daymar Select Fine Coffees
460 Cypress Ln Ste B
El Cajon, CA 92020

Current President/CEO
Café El Marino
Carretera Internacional
Km. 1193.5 al Sur. Col. Anáhuac
Mazatlán, Sinaloa, México
CP 82188

Current President/CEO
Café El Marino
Carretera Internacional
Km. 1192 al Sur. Col. Anáhuac
Mazatlán, Sinaloa, México.
CP 82180

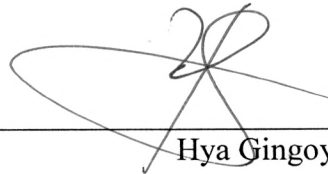
Name and address of each public prosecutor to whom documents were mailed:

See Distribution List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: 7-7-2016

By: _____


Hya Gingoyon

Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 th Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange St. Ste. 5 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 th Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 nd Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110

EXHIBIT B

SECTION 5 PAYMENT ALLOCATIONS

Total payment of \$38,000 allocated as follows:

a. Civil Penalty Payment: \$1,000 (\$750 to OEHHA, \$250 to CAG)

b. Separate payment to CAG: \$11,000

c. Attorney fee and cost reimbursement payment: \$26,000

2712186.1

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