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

15 ENVIRONMENTAL RESEARCH
16 CENTER, INC. a non-profit California
corporation,
17
18 Plaintiff,
19
20 v.
21 SKOOP, LLC and DOES 1-25, Inclusive,
22
23 Defendants.

CASE NO. RG17854133

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: 03/23/2017

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit
26 corporation, as a private enforcer and in the public interest, initiated this action by filing a
27 Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the provisions
28 of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against

1 SKOOP, LLC (“SKOOP”) and DOES 1-25. In this action, ERC alleges that a number of
2 products manufactured, distributed, or sold by SKOOP contain lead and/or cadmium, chemicals
3 listed under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to
4 these chemicals at a level requiring a Proposition 65 warning. These products (referred to
5 hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are:

- 6 1) Skoop LLC Healthy Skoop B-Strong Choco-lot Plant-Based Protein Shake
- 7 2) Skoop LLC Healthy Skoop Plant-Based Protein All-In-One Nutritional Shake
8 Chocolate
- 9 3) Skoop LLC Healthy Skoop Plant-Based Protein All-In-One Nutritional Shake
10 Vanilla
- 11 4) Skoop LLC Healthy Skoop Plant-Based Greens Blend Unsweetened
- 12 5) Skoop LLC Healthy Skoop Plant-Based Greens Blend Sweetgreens
- 13 6) Skoop LLC Healthy Skoop Plant-Based Greens Blend Chocofresh
- 14 7) Skoop LLC Healthy Skoop Ignite Performance Beet Blend Sweet Beet
- 15 8) Skoop LLC Healthy Skoop Ignite Performance Beet Blend Berry Beet
- 16 9) Skoop LLC Skoop B Lovely Renewberry

17 **1.2** ERC and SKOOP are hereinafter referred to individually as a “Party” or
18 collectively as the “Parties.”

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

23 **1.4** ERC contends that SKOOP is a business entity that has employed ten or more
24 persons at all times relevant to this action, and qualifies as a “person in the course of business”
25 within the meaning of Proposition 65. SKOOP manufactures, distributes, and/or sells the Covered
26 Products.

27 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
28 dated August 16, 2016, that was served on the California Attorney General, other public

1 enforcers, and SKOOP (“Notice”). A true and correct copy of the 60-Day Notice dated August
2 16, 2016 is attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60
3 days have passed since the Notice was served on the Attorney General, public enforcers, and
4 SKOOP and no designated governmental entity has filed a complaint against SKOOP with
5 regard to the Covered Products or the alleged violations.

6 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
7 persons in California to lead and/or cadmium without first providing clear and reasonable
8 warnings in violation of California Health and Safety Code section 25249.6. SKOOP denies all
9 material allegations contained in the Notice and Complaint.

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

20 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
21 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
22 current or future legal proceeding unrelated to these proceedings.

23 **1.9** The Effective Date of this Consent Judgment is the date on which a valid Notice
24 of Entry of Judgment by this Court is served by ERC on SKOOP.

25 **2. JURISDICTION AND VENUE**

26 For purposes of this Consent Judgment and any further court action that may become
27 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
28 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction

1 over SKOOP as to the acts alleged in the Complaint, that venue is proper in Alameda County,
2 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
3 all claims up through and including the Compliance Date (as that term is defined in section 3.1
4 below) which were or could have been asserted in this action based on the facts alleged in the
5 Notice and Complaint.

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

7 **3.1** Any Covered Products that are manufactured six (6) months after the Effective
8 Date (the “Compliance Date”) that SKOOP thereafter distributes into the the State of California,
9 offers for sale to a third party for retail sale in California, or directly sells in the State of
10 California, shall either (1) contain no more than 0.5 micrograms of lead per day (“Daily Lead
11 Exposure Level”) and/or more than 4.10 micrograms of cadmium per day (“Daily Cadmium
12 Exposure Level”) as calculated pursuant to Section 3.1.2, excluding allowances pursuant to
13 Section 3.3, and as validated by the quality control methodology described in Section 3.4; or
14 (2) meet the warning requirements under section 3.2.

15 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
16 of California” shall mean to directly ship a Covered Product into California for sale in
17 California or to sell a Covered Product to a distributor that SKOOP knows or has reason to
18 know will sell the Covered Product in California.

19 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
20 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
21 calculated using the following formula: micrograms of lead or cadmium per gram of product
22 minus the amounts of lead listed in Table 3.1.2 below, multiplied by grams of product per
23 serving of the product (using the largest serving size appearing on the product label), multiplied
24 by servings of the product per day (using the largest number of servings in a recommended
25 dosage appearing on the product label), which equals micrograms of lead or cadmium exposure
26 per day.

27 TABLE 3.1.2
28

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

If, at any time after the Compliance Date, ERC tests a Covered Product and the test results indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, SKOOP agrees to confidentially supply to ERC within 30 days a list of ingredients, including the percentage of each ingredient (“Ingredient List”), of that particular covered product so that ERC may be able to calculate the daily exposure based on the allowances in the table above.

In the event that a dispute arises with respect to compliance with the terms of this Consent Judgment as to any contribution from naturally occurring lead levels under the Section, the Parties shall meet and confer as set forth in Section 15.

3.2 Clear and Reasonable Warnings

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

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

SKOOP shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4.

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

6 The Warning shall be at least the same size as the largest of any other health or safety
7 warnings also appearing on its website, at the point of display, or on the label or container of
8 SKOOP's product packaging and the word "WARNING" shall be in all capital letters and in bold
9 print. No statements intended to or likely to have the effect of diminishing the impact of or
10 contradicting the Warning shall accompany it.

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

15 **3.3 Reformulated Covered Products**

16 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
17 greater than 0.5 micrograms of lead per day after subtracting the lead deemed naturally occurring
18 for purposes of the Consent Judgment as set forth in Section 3.1.2 and/or "Daily Cadmium
19 Exposure Level" is no more than 4.10 micrograms of cadmium per day as determined by the
20 quality control methodology 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 Date, SKOOP 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 three randomly selected
25 samples of each of the Covered Products, in the form intended for sale to the end-user, which
26 SKOOP intends to sell or is manufacturing for sale in California, directly selling to a consumer
27 in California or "Distributing into the State of California." The testing requirement does not
28 apply to any of the Covered Products for which SKOOP have provided the Warning specified

1 in Section 3.2. If tests conducted pursuant to this Section demonstrate that no Warning is
2 required for a Covered Product during each of three consecutive years, then the testing
3 requirements of this Section will no longer be required as to that Covered Product. SKOOP
4 shall retain all test results and documentation for a period of five years from the date of each
5 test.

6 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
7 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the
8 three (3) randomly selected samples of the Covered Products will be controlling.

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

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

20 **3.4.5** Nothing in this Consent Judgment shall limit SKOOP’s ability to
21 conduct, or require that others conduct, additional testing of the Covered Products, including
22 the raw materials used in their manufacture.

23 **3.4.6** Beginning on the Compliance Date and continuing for a period of three
24 years, upon demonstration by ERC of test results showing a “Daily Lead Exposure Level” of
25 more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more
26 than 4.10 micrograms of cadmium per day for a product that SKOOP has not provided the
27 warning specified in Section 3.2, SKOOP shall deliver lab reports obtained pursuant to Section
28 3.4 to ERC within thirty (30) days of ERC’s written request.

1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
3 attorney’s fees, and costs, SKOOP shall make a total payment of \$70,000.00 (“Total Settlement
4 Amount”) according to the following payment schedule (“Due Dates”):

- 5 • Payment 1 -- \$11,666.66 within 10 days of the Effective Date
- 6 • Payment 2 -- \$11,666.66 with 40 days of the Effective Date
- 7 • Payment 3 -- \$11,666.66 within 70 days of the Effective Date
- 8 • Payment 4 – \$11,666.66 within 100 days of the Effective Date
- 9 • Payment 5 – \$11,666.66 within 130 days of the Effective Date
- 10 • Payment 6 – 11,666.67 within 160 days of the Effective Date

11 **4.2** SKOOP shall make these payments by wire transfer to ERC’s escrow account,
12 for which ERC will give SKOOP the necessary account information. The Total Settlement
13 Amount shall be apportioned as follows:

14 **4.3** \$25,365.53 shall be considered a civil penalty pursuant to California Health and
15 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$19,024.15) of the civil penalty to
16 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
17 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
18 Code section 25249.12(c). ERC will retain the remaining 25% (\$6,341.38) of the civil penalty.

19 **4.4** \$1,687.41 shall be distributed to ERC as reimbursement to ERC for reasonable
20 costs incurred in bringing this action.

21 **4.5** \$19,024.12 shall be distributed to ERC as an Additional Settlement Payment
22 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
23 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
24 caused by Defendant in this matter. These activities are detailed below and support ERC’s
25 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
26 supplement products in California. ERC’s activities have had, and will continue to have, a direct
27 and primary effect within the State of California because California consumers will be benefitted
28 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements

1 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
2 the products.

3 Based on a review of past years' actual budgets, ERC is providing the following list of
4 activities ERC engages in to protect California consumers through Proposition 65 citizen
5 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
6 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
7 supplement products that may contain lead [and/or cadmium] [and/or arsenic] and are sold to
8 California consumers. This work includes continued monitoring and enforcement of past consent
9 judgments and settlements to ensure companies are in compliance with their obligations
10 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
11 cadmium. This work also includes investigation of new companies that ERC does not obtain any
12 recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-
13 20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
14 companies, developing and maintaining a case file, testing products from these companies,
15 providing the test results and supporting documentation to the companies, and offering guidance
16 in warning or implementing a self-testing program for lead and/or cadmium in dietary
17 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
18 Lead?" Program which reduces the numbers of contaminated products that reach California
19 consumers by providing access to free testing for lead in dietary supplement products (Products
20 submitted to the program are screened for ingredients which are suspected to be contaminated,
21 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the
22 results shared with the consumer that submitted the product).

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

1 **4.6** \$6,580.00 shall be distributed to William F. Wraith as reimbursement of ERC's
2 attorney's fees, while \$17,342.94 shall be distributed to ERC for its in-house legal fees. Except
3 as explicitly provided herein, each Party shall bear its own fees and costs.

4 **4.7** In the event that SKOOP fails to remit any payment pursuant to Section 4.1 on
5 or before the respective Due Dates, SKOOP shall be deemed to be in material breach of its
6 obligations under this Consent Judgment. ERC shall provide written notice of the delinquency
7 to SKOOP via electronic mail. If SKOOP fails to deliver the delinquent payment within five
8 (5) days from the written notice, the Total Settlement Payment shall be immediately due and
9 owing and shall accrue interest at the statutory post-judgment interest rate provided in the
10 California Code of Civil Procedure section 685.010. Additionally, SKOOP agrees to pay
11 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this
12 Consent Judgment.

13 **5. MODIFICATION OF CONSENT JUDGMENT**

14 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
15 written stipulation of the Parties or pursuant to Section 5.3 and (ii) upon entry by the Court of a
16 modified consent judgment.

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

1 **5.3** In the event that SKOOP initiates or otherwise requests a modification under
2 Section 5.1, and the meet and confer process leads to a joint motion or application of the
3 Consent Judgment, SKOOP shall reimburse ERC its costs and reasonable attorney’s fees for
4 the time spent in the meet-and-confer process and filing and arguing the motion or application.

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

8 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
9 **JUDGMENT**

10 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
11 this Consent Judgment.

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

20 **7. APPLICATION OF CONSENT JUDGMENT**

21 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
22 respective officers, directors, shareholders, members, founders, attorneys, consultants,
23 accountants, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees,
24 customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent
25 Judgment shall have no application to Covered Products which are distributed or sold exclusively
26 outside the State of California and which are not used by California consumers.

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

28 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,

1 on behalf of itself and in the public interest, and SKOOP and its respective officers, directors,
2 shareholders, members, founders, attorneys, consultants, accountants, employees, agents,
3 parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not
4 including private label customers of SKOOP), distributors, wholesalers, retailers, and all other
5 upstream and downstream entities in the distribution chain of any Covered Product, and the
6 predecessors, successors, and assigns of any of them (collectively, "Released Parties"). ERC
7 hereby fully releases and discharges the Released Parties from any and all claims, actions,
8 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
9 asserted, or that could have been asserted from the handling, use, or consumption of the
10 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
11 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
12 lead and/or cadmium up to and including the Effective Date.

13 **8.2** ERC on its own behalf only, and SKOOP on its own behalf only, further
14 waive and release any and all claims they may have against each other for all actions or
15 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
16 65 in connection with the Notice and Complaint up through and including the Effective Date,
17 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
18 enforce the terms of this Consent Judgment.

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

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

1 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
2 OR HER SETTLEMENT WITH THE DEBTOR.

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

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

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

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

15 **10. GOVERNING LAW**

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

18 **11. PROVISION OF NOTICE**

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

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

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

28 With a copy to:
WILLIAM F. WRAITH
WRAITH LAW
24422 Avenida de la Carlota, Suite 400

1 Laguna Hills, CA 92653
2 Tel: (949) 452-1234
3 Fax: (949) 452-1102

4 **FOR SKOOP, LLC:**

5 SKOOP, LLC
6 Dr James Rouse
7 Skoop, LLC
8 2438 30th Street
9 Boulder, CO. 80301

10 With a copy to:
11 CHRISTOPHER VAN GUNDY
12 KELLER AND HECKMAN LLP
13 Three Embarcadero Center, Suite 1420
14 San Francisco, CA 94111
15 Tel: (415) 948-2800
16 Fax: (415) 948-2808
17 vangundy@khlaw.com

18 **12. COURT APPROVAL**

19 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
20 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
21 Consent Judgment.

22 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
23 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
24 prior to the hearing on the motion.

25 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
26 void and have no force or effect.

27 **13. EXECUTION AND COUNTERPARTS**

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

14. DRAFTING

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

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. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

12 **16. ENFORCEMENT**

13 ERC may, by motion or order to show cause before the Superior Court of Alameda
14 County, enforce the terms and conditions contained in this Consent Judgment. In any action
15 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
16 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

17 **17. ENTIRE AGREEMENT, AUTHORIZATION**

18 **17.1** This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter herein, and any and all
20 prior discussions, negotiations, commitments, and understandings related hereto. No
21 representations, oral or otherwise, express or implied, other than those contained herein have
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
23 herein, shall be deemed to exist or to bind any Party.

24 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment.

26 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
27 **CONSENT JUDGMENT**

28 This Consent Judgment has come before the Court upon the request of the Parties. The

1 Parties request the Court to fully review this Consent Judgment and, being fully informed
2 regarding the matters which are the subject of this action, to:

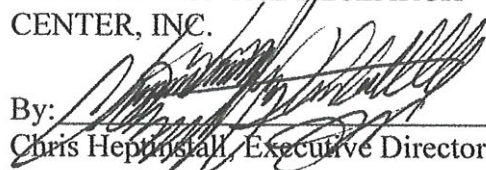
3 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
4 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
5 been diligently prosecuted, and that the public interest is served by such settlement; and

6 (2) Make the findings pursuant to California Health and Safety Code section
7 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

8 **IT IS SO STIPULATED:**

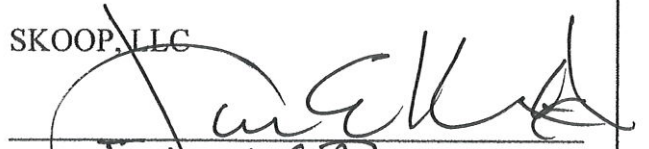
9 Dated: 3/16/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

10
11 By: 
Chris Heptinstall, Executive Director

12 Dated: 3/24, 2017

SKOOP, LLC

13
14
15 By: 
Its: JAMES E. RAU
SKOOP LLC COFOUNDER
BOARD MEMBER

16 **APPROVED AS TO FORM:**

17 Dated: _____, 2017

WRAITH LAW

18
19 By: _____
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

20
21
22 Dated: _____, 2017

KELLER AND HECKMAN LLP

23
24 By: _____
Christopher Van Gundy
Attorneys for Defendant Skoop, LLC

1 Parties request the Court to fully review this Consent Judgment and, being fully informed
2 regarding the matters which are the subject of this action, to:

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

6 (2) Make the findings pursuant to California Health and Safety Code section
7 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

8 **IT IS SO STIPULATED:**

9 Dated: 3/16/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

10
11 By: 
Chris Hepinstall, Executive Director

12
13 Dated: _____, 2017

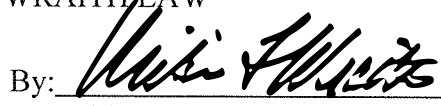
SKOOP, LLC

14
15 By:
Its:

16 **APPROVED AS TO FORM:**


17 Dated: March 16, 2017

WRAITHLAW

18
19 By: 
William F. Wraith
20 Attorney for Plaintiff Environmental
Research Center, Inc.

21
22 Dated: March 16, 2017

KELLER AND HECKMAN LLP

23
24 By: 
Christopher Van Gundy
25 Attorneys for Defendant Skoop, LLC
26
27
28

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2017

Judge of the Superior Court

EXHIBIT “A”

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

August 16, 2016

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

Dear Alleged Violator 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 Violator 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 Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Skoop, LLC

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. Skoop LLC Healthy Skoop B-Strong Choco-lot Plant-Based Protein Shake - Lead**
- 2. Skoop LLC Healthy Skoop Plant-Based Protein All-In-One Nutritional Shake Chocolate – Lead, Cadmium**

3. **Skoop LLC Healthy Skoop Plant-Based Protein All-In-One Nutritional Shake Vanilla –Lead**
4. **Skoop LLC Healthy Skoop Plant-Based Greens Blend Unsweetened - Lead**
5. **Skoop LLC Healthy Skoop Plant-Based Greens Blend Sweetgreens - Lead**
6. **Skoop LLC Healthy Skoop Plant-Based Greens Blend Chocofresh - Lead**
7. **Skoop LLC Healthy Skoop Ignite Performance Beet Blend Sweet Beet - Lead**
8. **Skoop LLC Healthy Skoop Ignite Performance Beet Blend Berry Beet - Lead**
9. **Skoop LLC Skoop B Lovely Renewberry - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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 August 16, 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 Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

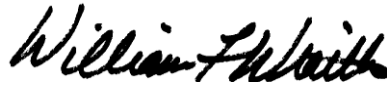
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified 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.

August 16, 2016

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

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Skoop, LLC and its Registered Agent 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 Skoop, LLC

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: August 16, 2016



William F. Wraith

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 August 16, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Skoop, LLC
2438 30th Street
Boulder, CO 80301

Drew Grumhaus
(Registered Agent for Skoop, LLC)
1395 Bear Mountain Drive, #100
Boulder, CO 80305

On August 16, 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 August 16, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

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

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

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

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

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

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

August 16, 2016

Page 6

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

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

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

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

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

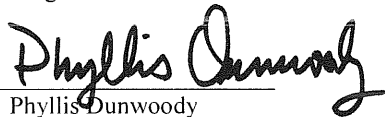
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On August 16, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on August 16, 2016, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

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

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

District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95642

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Los Angeles County
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix A

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ 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: August 16, 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: August 16, 2016

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

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

Phone number: 619-500-3090

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

Certification of Compliance

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

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

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

Certification

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

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .

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

Revised: May 2014

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

² See Section 25501(a)(4).

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

HISTORY

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

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

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