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

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

19 **Plaintiff,**

20 **v.**

21 **EN-R-G FOODS, LLC dba HONEY**  
22 **STINGER, a Colorado limited liability**  
23 **company, and DOES 1-100**

24 **Defendants.**

**CASE NO. RG16842539**

**STIPULATED CONSENT**  
**JUDGMENT**

**Health & Safety Code § 25249.5 et seq.**

**Action Filed: November 15, 2016**

**Trial Date: None set**

25 **1. INTRODUCTION**

26 **1.1** On November 15, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a  
27 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
28 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
2 (“Proposition 65”), against EN-R-G Foods, LLC dba Honey Stinger (“Honey Stinger”) and Does  
3 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold  
4 by Honey Stinger contain lead, a chemical listed under Proposition 65 as a carcinogen and  
5 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65  
6 warning. These products (referred to hereinafter individually as a “Covered Product” or  
7 collectively as “Covered Products”) are: (1) “Honey Stinger Energy Bar Blueberry Buzz Yogurt  
8 Coated Bottom,” (2) “Honey Stinger Energy Bar Berry Banana Buzz Yogurt Coated Bottom,”  
9 (3) “Honey Stinger Energy Bar Peanut Butter N’ Honey Chocolate Coated Bottom,” (4) “Honey  
10 Stinger Energy Bar Rocket Chocolate Chocolate Coated Bottom,” (5) “Honey Stinger 10g  
11 Protein Dark Chocolate Coconut Almond Pro,” (6) “Honey Stinger 10g Protein Dark Chocolate  
12 Cherry Almond Pro,” and (7) “Honey Stinger 10g Protein Dark Chocolate Mocha Cherry Pro.”

13       **1.2**     ERC and Honey Stinger are hereinafter referred to individually as a “Party” or  
14 collectively as the “Parties.”

15       **1.3**     ERC is a California non-profit corporation dedicated to, among other causes,  
16 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
17 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
18 encouraging corporate responsibility.

19       **1.4**     For purposes of this Consent Judgment, the Parties agree that Honey Stinger is a  
20 business entity that has employed ten or more persons at all times relevant to this action, and  
21 qualifies as a “person in the course of business” within the meaning of Proposition 65. Honey  
22 Stinger manufactures, distributes, and/or sells the Covered Products.

23       **1.5**     The Complaint is based on allegations contained in ERC’s Notice of Violation  
24 dated October 4, 2016 that was served on the California Attorney General, other public  
25 enforcers, and Honey Stinger (“Notice”). A true and correct copy of the 60-Day Notice is  
26 attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60 days have  
27 passed since the Notice was served on the Attorney General, public enforcers, and Honey  
28 Stinger and no designated governmental entity has filed a complaint against Honey Stinger with

1 regard to the Covered Products or the alleged violations.

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

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

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

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

## 21     **2.    JURISDICTION AND VENUE**

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

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

2             **3.1**     Beginning on the Effective Date, Honey Stinger shall be permanently enjoined  
3 from manufacturing for sale in the State of California, “Distributing into the State of  
4 California”, or directly selling in the State of California, any Covered Products which exposes a  
5 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day,  
6 excluding allowances pursuant to Section 3.3, unless it meets the warning requirements under  
7 Section 3.2.

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

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

18             **3.2     Clear and Reasonable Warnings**

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

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

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

26             The Warning shall be securely affixed to or printed upon the container or label of each  
27 Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall  
28 appear on the checkout page when a California delivery address is indicated for any purchase of

1 any Covered Product. An asterisk or other identifying method must be utilized to identify which  
2 products on the checkout page are subject to the Warning.

3 The Warning shall be at least the same size as the largest of any other health or safety  
4 warnings also appearing on its website or on the label or container of Honey Stinger's product  
5 packaging and the word "WARNING" shall be in all capital letters and in bold print. No  
6 statements contradicting or conflicting with the Warning shall accompany the Warning.

7 Honey Stinger must display the above Warning with such conspicuousness, as compared  
8 with other words, statements, design of the label, container, or on its website, as applicable, to  
9 render the Warning likely to be read and understood by an ordinary individual under customary  
10 conditions of purchase or use of the product.

### 11 3.3 Reformulated Covered Products

12 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no  
13 greater than 0.5 micrograms of lead per day as determined by the quality control methodology  
14 described in Section 3.4, excluding amounts of naturally occurring lead in the ingredients listed in  
15 the table below.

16 INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
17 Elemental Calcium	0.8 micrograms/gram
18 Ferrous Fumarate	0.4 micrograms/gram
19 Zinc Oxide	8.0 micrograms/gram
20 Magnesium Oxide	0.4 micrograms/gram
21 Magnesium Carbonate	0.332 micrograms/gram
22 Magnesium Hydroxide	0.4 micrograms/gram
23 Zinc Gluconate	0.8 micrograms/gram
24 Potassium Chloride	1.1 micrograms/gram
25 Cocoa Powder	1.0 micrograms/gram
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27	
28	

Chocolate Liquor	1.0 micrograms/gram
Cocoa Butter	0.1 micrograms/gram

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

**3.4 Testing and Quality Control Methodology**

**3.4.1** Beginning within one year of the Effective Date, Honey Stinger shall arrange for lead testing of the Covered Products at least once a year for three consecutive years by arranging for testing of three randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Honey Stinger intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, Honey Stinger changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, Honey Stinger shall test that Covered Product annually for at least three (3) consecutive years after such change is made.

1           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
2 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
3 controlling.

4           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
5 laboratory method that complies with the performance and quality control factors appropriate  
6 for the method used, including limit of detection, qualification, accuracy, and precision that  
7 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
8 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
9 method subsequently agreed to in writing by the Parties and approved by the Court through  
10 entry of a modified consent judgment.

11           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
12 independent third party laboratory certified by the California Environmental Laboratory  
13 Accreditation Program or an independent third-party laboratory that is registered with the  
14 United States Food & Drug Administration.

15           **3.4.5** Nothing in this Consent Judgment shall limit Honey Stinger’s ability to  
16 conduct, or require that others conduct, additional testing of the Covered Products, including  
17 the raw materials used in their manufacture.

18           **3.4.6** Within thirty (30) days of ERC’s written request, Honey Stinger shall  
19 deliver lab reports obtained pursuant to Section 3.4 to ERC. Honey Stinger shall retain all test  
20 results and documentation for a period of five years from the date of each test.

#### 21   **4. SETTLEMENT PAYMENT**

22           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
23 attorney’s fees, and costs, Honey Stinger shall make a total payment of \$40,000.00 (FORTY  
24 THOUSAND DOLLARS) (“Total Settlement Amount”) to ERC. The Total Settlement  
25 Amount will be paid in three installments. The first installment shall be \$20,000.00  
26 (TWENTY THOUSAND DOLLARS) and will be paid within 5 days of the Effective Date .  
27 The second installment shall be \$10,000 (TEN THOUSAND DOLLARS) and will be made  
28 within 95 days of the Effective Date. The third and final payment shall be \$10,000.00 (TEN

1 THOUSAND DOLLARS) and will be made within 185 days of the Effective Date. Honey  
2 Stinger shall make these payments by wire transfer to ERC's escrow account, for which ERC  
3 will give Honey Stinger the necessary account information. The Total Settlement Amount shall  
4 be apportioned as follows:

5 **4.2** \$12,444.76 shall be considered a civil penalty pursuant to California Health and  
6 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$9,333.57) of the civil penalty to the  
7 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
8 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
9 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,111.19) of the civil penalty.

10 **4.3** \$3,384.09 shall be distributed to ERC as reimbursement to ERC for reasonable  
11 costs incurred in bringing this action.

12 **4.4** \$9,333.55 shall be distributed to ERC as an Additional Settlement Payment  
13 ("ASP"), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d) and  
14 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
15 caused by Defendant in this matter. These activities are detailed below and support ERC's  
16 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
17 supplement products in California. ERC's activities have had, and will continue to have, a direct  
18 and primary effect within the State of California because California consumers will be benefitted  
19 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
20 providing clear and reasonable warnings to California consumers prior to ingestion of the  
21 products.

22 Based on a review of past years' actual budgets, ERC is providing the following list of  
23 activities ERC engages in to protect California consumers through Proposition 65 citizen  
24 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
25 activities: (1) ENFORCEMENT (55-70%): obtaining, shipping, analyzing, and testing dietary  
26 supplement products that may contain lead and are sold to California consumers; continued  
27 monitoring and enforcement of past consent judgments and settlements to ensure companies are  
28 in compliance with their obligations thereunder, with a specific focus on those judgments and



1 settlements concerning lead (which necessarily includes additional work purchasing, processing,  
2 analyzing and testing consumer products; litigating matters that result in defaults, bankruptcies,  
3 or dismissals; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's  
4 Voluntary Compliance Program by acquiring products from companies, developing and  
5 maintaining a case file, testing products from these companies, providing the test results and  
6 supporting documentation to the companies, and offering guidance in implementing a self-testing  
7 program for lead in dietary supplement products; (3) "GOT LEAD" PROGRAM (up to 5%):  
8 maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products  
9 that reach California consumers by providing access to free testing for lead in dietary supplement  
10 products (Products submitted to the program are screened for ingredients which are suspected to  
11 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory  
12 for testing, and the results shared with the consumer that submitted the product); (4)  
13 DONATION: from this settlement, a donation of \$466.00 to As You Sow will be provided to  
14 address reducing toxic chemical exposures in California and following up with the recipient to  
15 ensure the funds are utilized in a manner that is consistent with ERC's mission and stated  
16 purpose of the Donation; (5) PUBLIC OUTREACH (up to 5%): public outreach programs  
17 including maintaining ERC's blog, website, and social media accounts; (6) SPECIAL  
18 PROJECTS (10-20%): projects including obtaining expert and legal opinions not specific to any  
19 one case that are necessary to the continued private enforcement of Proposition 65 (7)  
20 SCHOLARSHIPS (up to 5%): scholarships for college students in California who have been or  
21 are currently diagnosed with cancer or who are pursuing an environmental health science major;  
22 and (8) PRODUCT DATABASE (up to 5%): maintaining a database with all products sold to  
23 California consumers that ERC has tested for lead, cadmium, or arsenic.

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

27 **4.5** \$14,837.60 shall be distributed to ERC for its in-house legal fees. Except as  
28 explicitly provided herein, each Party shall bear its own fees and costs.

1           **4.6**     In the event that Honey Stinger fails to remit the Total Settlement Payment  
2 owed under Section 4 of this Consent Judgment on or before the Due Date, Honey Stinger shall  
3 be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
4 provide written notice of the delinquency to Honey Stinger via electronic mail. If Honey  
5 Stinger fails to deliver the Total Settlement Payment within five (5) days from the written  
6 notice, the Total Settlement Payment shall accrue interest at the statutory judgment interest rate  
7 provided in the Code of Civil Procedure section 685.010. Additionally, Honey Stinger agrees  
8 to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due  
9 under this Consent Judgment.

10       **5.     MODIFICATION OF CONSENT JUDGMENT**

11           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
12 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a  
13 modified consent judgment.

14           **5.2**     If Honey Stinger seeks to modify this Consent Judgment under Section 5.1, then  
15 Honey Stinger must provide written notice to ERC of its intent ("Notice of Intent"). If ERC  
16 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
17 must provide written notice to Honey Stinger within thirty (30) days of receiving the Notice of  
18 Intent. If ERC notifies Honey Stinger in a timely manner of ERC's intent to meet and confer,  
19 then the Parties shall meet and confer in good faith as required in this Section. The Parties  
20 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent  
21 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
22 modification, ERC shall provide to Honey Stinger a written basis for its position. The Parties  
23 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
24 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
25 deadlines for the meet-and-confer period.

26           **5.3**     In the event that Honey Stinger initiates or otherwise requests a modification  
27 under Section 5.1, and the meet and confer process leads to a joint motion or application of the  
28 Consent Judgment, Honey Stinger shall reimburse ERC its costs and reasonable attorney's fees

1 for the time spent in the meet-and-confer process and filing and arguing the motion or  
2 application.

3       **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
4 application in support of a modification of the Consent Judgment, then either Party may seek  
5 judicial relief on its own.

6       **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
7       **JUDGMENT**

8       **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
9 this Consent Judgment.

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

18       **7.     APPLICATION OF CONSENT JUDGMENT**

19       This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
20 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
21 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
22 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
23 application to Covered Products which is distributed or sold exclusively outside the State of  
24 California.

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

26       **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC,  
27 on behalf of itself and in the public interest, and Honey Stinger and its respective officers,  
28 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,

1 franchisees, licensees, customers (not including private label customers of Honey Stinger),  
2 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
3 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
4 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the  
5 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,  
6 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from  
7 the handling, use, or consumption of the Covered Products, as to any alleged violation of  
8 Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
9 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

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

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

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

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

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

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

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

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

21 Chris Heptinstall, Executive Director, Environmental Research Center  
22 3111 Camino Del Rio North, Suite 400  
23 San Diego, CA 92108  
24 Tel: (619) 500-3090  
25 Email: chris\_erc501c3@yahoo.com

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

1 Facsimile: (510) 540-5543

2 **EN-R-G FOODS, LLC dba HONEY STINGER**

3 William R. Gamber

4 735 Oak Street

5 Steamboat Springs, Co 30477

6 With a copy to:

7 Phillip Allan Trajan Perez

8 Miller Nash Gram & Dunn LLP

9 100 Oceangate, Suite 300

10 Long Beach, CA 90802

11 Telephone: 562-435-8002

12 Facsimile: 562-435-7967

13 **12. COURT APPROVAL**

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

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

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

22 **13. EXECUTION AND COUNTERPARTS**

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

26 **14. DRAFTING**

27 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
28 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
and no provision of this Consent Judgment shall be construed against any Party, based on the fact

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
3 equally in the preparation and drafting of this Consent Judgment.

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

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

9 **16. ENFORCEMENT**

10 ERC may, by motion or order to show cause before the Superior Court of Alameda  
11 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
12 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
13 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
14 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
15 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
16 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
17 law for failure to comply with Proposition 65.

18 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

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

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

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11  
12 **IT IS SO STIPULATED:**


13 Dated: 11/15/, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

14  
15 By:   
Chris Heppert, Executive Director

16  
17 Dated: 12/16, 2016

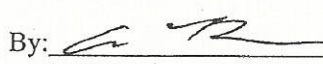
EN-R-G FOODS, LLC dba HONEY  
STINGER

18  
19   
20 By: William Gamber  
Its:

21  
22 **APPROVED AS TO FORM:**

23 Dated: 11-15-16, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.


24  
25 By:   
26 Anne Barker  
27 In-House Counsel  
28



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Dated: 12/14, 2016

MILLER NASH GRAHAM & DUNN LLP

By:   
Phillip Allan Trajan Perez  
Attorney for Defendant EN-R-G Foods,  
LLC dba Honey Stinger

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

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

\_\_\_\_\_  
Judge of the Superior Court

# **EXHIBIT A**



## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 4, 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 am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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:

**EN-R-G Foods, LLC dba Honey Stinger**

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

**Honey Stinger Energy Bar Blueberry Buzz Yogurt Coated Bottom - Lead**  
**Honey Stinger Energy Bar Berry Banana Buzz Yogurt Coated Bottom - Lead**  
**Honey Stinger Energy Bar Peanut Butter N' Honey Chocolate Coated Bottom - Lead**  
**Honey Stinger Energy Bar Rocket Chocolate Chocolate Coated Bottom - Lead**  
**Honey Stinger 10g Protein Dark Chocolate Coconut Almond Pro - Lead**  
**Honey Stinger 10g Protein Dark Chocolate Cherry Almond Pro - Lead**  
**Honey Stinger 10g Protein Dark Chocolate Mocha Cherry Pro - 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.

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 this chemical 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 October 4, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, 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 chemical, as well as an expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to EN-R-G Foods, LLC dba Honey Stinger 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 EN-R-G Foods, LLC dba Honey Stinger**

I, Chris Heptinstall, 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.

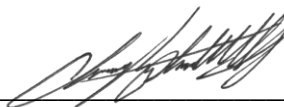
2. I am the Executive Director for the noticing party.

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

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

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

Dated: October 4, 2016



---

Chris Heptinstall

**CERTIFICATE OF SERVICE**

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

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

On October 4, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
EN-R-G Foods, LLC dba Honey Stinger  
2620 South Copper Frontage Road, Unit H  
Steamboat Springs, CO 80487

Current President or CEO  
EN-R-G Foods, LLC dba Honey Stinger  
Post Office Box 771162  
Steamboat Springs, CO 80477

Current President or CEO  
EN-R-G Foods, LLC dba Honey Stinger  
735 Oak Street  
Steamboat Springs, CO 80487

Current President or CEO  
EN-R-G Foods, LLC dba Honey Stinger  
2550 South Copper Frontage Road  
Steamboat Springs, CO 80487

Current President or CEO  
EN-R-G Foods, LLC dba Honey Stinger  
Post Office Box 772133  
Steamboat Springs, CO 80477

William Gamber III  
(EN-R-G Foods, LLC’s dba Honey Stinger’s  
Registered Agent for Service of Process only)  
Post Office Box 772133  
Steamboat Springs, CO 80477

On October 4, 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On October 4, 2016, 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

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

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

October 4, 2016

Page 5

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

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

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

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

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

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

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

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

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

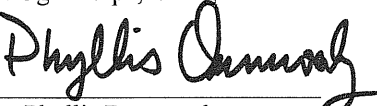
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On October 4, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 4, 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 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**Appendix A**

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

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

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

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

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

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

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

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

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

#### ***HOW IS PROPOSITION 65 ENFORCED?***

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

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

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

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

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

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

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

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

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

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

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

The notice is reproduced here:

Date: October 4, 2016

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

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

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**

Date: October 4, 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).

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Signature of alleged violator or authorized representative Date

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Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

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

Revised: May 2014

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

<sup>2</sup> See Section 25501(a)(4).

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

## **HISTORY**

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

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

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