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11 Attorney for Defendants  
ELEMIS LTD; ELEMIS USA, INC.; and STEINER  
12 LEISURE LIMITED

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

15  
16 **ENVIRONMENTAL RESEARCH**  
**CENTER, INC. a California non-profit**  
17 **corporation,**

18 **Plaintiff,**

19 **v.**

20 **ELEMIS LTD, a United Kingdom limited**  
**company; ELEMIS USA, INC., a Florida**  
**corporation; STEINER LEISURE**  
21 **LIMITED, a Commonwealth of the**  
22 **Bahamas limited company; and DOES 1-**  
**100**

23 **Defendants.**  
24

CASE NO. RG17880587

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 26, 2017  
Trial Date: None set

25  
26 **1. INTRODUCTION**

27 **1.1** On October 26, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
28 non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")  
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
3 ("Proposition 65"), against Elemis Ltd; Elemis USA, Inc.; and Steiner Leisure Limited  
4 (collectively "Elemis") and Does 1-100. In this action, ERC alleges that a number of products  
5 manufactured, distributed, or sold by Elemis contain lead, a chemical listed under Proposition 65  
6 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level  
7 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a  
8 "Covered Product" or collectively as "Covered Products") are: (1) Elemis Sp@home Vitality  
9 Body Enhancement Capsules, (2) Elemis Invigorating Cal-Metab Plus Body Performance, (3)  
10 Elemis Contouring Silhouette Body Performance, and (4) Elemis Cleansing Deep Drainage Body  
11 Performance.

12           **1.2**     ERC and Elemis are hereinafter referred to individually as a "Party" or  
13 collectively as the "Parties."

14           **1.3**     ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
15 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
16 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
17 and encouraging corporate responsibility.

18           **1.4**     Immediately upon entry of the Motion to Approve this Stipulated Consent  
19 Judgment, ERC will dismiss Steiner Leisure Limited ("Steiner") as a defendant in this action as  
20 Steiner contends it has employed less than ten employees at all times relevant to this action. For  
21 purposes of this Consent Judgment, the Parties agree that each remaining defendant is a  
22 business entity each of which has employed ten or more persons at all times relevant to this  
23 action, and qualifies as a "person in the course of business" within the meaning of Proposition  
24 65. Elemis manufactures, distributes, and/or sells the Covered Products.

25           **1.5**     The Complaint is based on allegations contained in ERC's Notice of Violation  
26 dated April 28, 2017 that was served on the California Attorney General, other public  
27 enforcers, and Elemis ("Notice"). A true and correct copy of the 60-Day Notice dated April 28,  
28 2017 is attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60

1 days have passed since the Notice was served on the Attorney General, public enforcers, and  
2 Elemis and no designated governmental entity has filed a complaint against Elemis with regard  
3 to the Covered Products or the alleged violations.

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

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

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

18 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as  
19 a Judgment by this Court.

20 **2. JURISDICTION AND VENUE**

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

28

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

2           **3.1**     Within six (6) months after the Effective Date, Elemis shall be permanently  
3 enjoined from manufacturing for sale in the State of California, “Distributing into the State of  
4 California,” or directly selling in the State of California, any Covered Products which expose a  
5 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day, or the  
6 No Significant Risk Level (“NSRL”) or Maximum Allowable Dose Levels (“MADL”)  
7 established by the California Office of Environmental Health Hazard Assessment (“OEHHA”)  
8 unless it meets the warning requirements under Section 3.2.

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

13           **3.1.2**   For purposes of this Consent Judgment, the “Daily Lead Exposure  
14 Level” shall be measured, pursuant to procedures set by OEHHA, in micrograms, and shall be  
15 calculated using the following formula: micrograms of lead per gram of product, multiplied by  
16 grams of product per serving of the product (using the largest serving size appearing on the  
17 product label), multiplied by servings of the product per day (using the largest number of  
18 servings in a recommended dosage appearing on the product label), which equals micrograms  
19 of lead exposure per day. If no recommended daily serving size is provided on the label, then  
20 the daily serving size shall equal one.

21           **3.2 Clear and Reasonable Warnings**

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

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

26 Elemis shall use the phrase “cancer and” in the Warning if Elemis has reason to believe that the  
27 “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the  
28 quality control methodology set forth in Section 3.4 or if Elemis has reason to believe that another

1 Proposition 65 chemical is present which may require a cancer warning.

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

7 The Warning shall be at least the same size as the largest of any other health or safety  
8 warnings also appearing on its website or on the label or container of Elemis' product packaging  
9 for the Covered Products and the word "WARNING" shall be in all capital letters and in bold  
10 print. No statements intended to or likely to have the effect of diminishing the impact of, or  
11 reducing the clarity of, the Warning on the average lay person shall accompany the Warning.  
12 Further, no statements may accompany the Warning that state or imply that the source of the listed  
13 chemical has an impact on or results in a less harmful effect of the listed chemical.

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

### 18 3.3 Reformulated Covered Products

19 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no  
20 greater than 0.5 micrograms of lead per day as determined by the quality control methodology  
21 described in Section 3.4 or another MADL for lead established by OEHHA.

### 22 3.4 Testing and Quality Control Methodology

23 3.4.1 Beginning within one (1) year of the Effective Date, Elemis shall arrange  
24 for lead testing of the Covered Products at least once a year for a minimum of two (2)  
25 consecutive years by arranging for testing of three (3) randomly selected samples of each of the  
26 Covered Products, in the form intended for sale to the end-user, which Elemis intends to sell or  
27 is manufacturing for sale in California, directly selling to a consumer in California or  
28 "Distributing into the State of California." If tests conducted pursuant to this Section

1 demonstrate that no Warning is required for a Covered Product during each of two (2)  
2 consecutive years, then the testing requirements of this Section will no longer be required as to  
3 that Covered Product. However, if during or after the two (2) year testing period, Elemis  
4 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the  
5 Covered Products, Elemis shall test that Reformulated Covered Product annually for at least  
6 two (2) consecutive years after such change is made.

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

10           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
11 laboratory method that is generally recognized and complies with the performance and quality  
12 control factors appropriate for the method used.

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

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

20           **3.4.6** Within thirty (30) days of ERC’s written request, Elemis shall deliver lab  
21 reports obtained pursuant to Section 3.4 to ERC, which ERC shall retain in confidence and not  
22 disclose. Elemis shall retain all test results and documentation for a period of five years from  
23 the date of each test.

24       **4. SETTLEMENT PAYMENT**

25           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
26 attorney’s fees, and costs, Elemis shall make a total payment of \$57,500 (“Total Settlement  
27 Amount”) to ERC within five (5) business days of the Effective Date (“Due Date”). Elemis  
28 shall make this payment by wire transfer to ERC’s escrow account, for which ERC will give

1 Elemis the necessary account information. The Total Settlement Amount shall be apportioned  
2 as follows:

3           **4.2**     \$20,410.63 shall be considered a civil penalty pursuant to California Health and  
4 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$15,307.97) of the civil penalty to  
5 OEHHA for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance  
6 with California Health and Safety Code section 25249.12(c). ERC will retain the remaining  
7 25% (\$5,102.66) of the civil penalty.

8           **4.3**     \$1,793.89 shall be distributed to ERC as reimbursement to ERC for reasonable  
9 costs incurred in bringing this action.

10           **4.4**     \$15,307.96 shall be distributed to ERC as an Additional Settlement Payment  
11 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
12 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
13 allegedly caused by Elemis in this matter. These activities are detailed below and support  
14 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in  
15 dietary supplement products in California. ERC’s activities have had, and will continue to  
16 have, a direct and primary effect within the State of California because California consumers  
17 will benefit from the reduction and/or elimination of exposure to lead in dietary supplements  
18 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of  
19 the products.

20           Based on a review of past years’ actual budgets, ERC is providing the following list of  
21 activities ERC engages in to protect California consumers through Proposition 65 citizen  
22 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
23 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
24 supplement products that may contain lead and are sold to California consumers. This work  
25 includes continued monitoring and enforcement of past consent judgments and settlements to  
26 ensure companies are in compliance with their obligations thereunder, with a specific focus on  
27 those judgments and settlements concerning lead. This work also includes investigation of new  
28 companies that ERC does not obtain any recovery through settlement or judgment; (2)

1 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary  
2 Compliance Program by acquiring products from companies, developing, and maintaining a case  
3 file, testing products from these companies, providing the test results and supporting  
4 documentation to the companies, and offering guidance in warning or implementing a self-  
5 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up  
6 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated  
7 products that reach California consumers by providing access to free testing for lead in dietary  
8 supplement products (products submitted to the program are screened for ingredients which are  
9 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a  
10 qualified laboratory for testing, and the results shared with the consumer that submitted the  
11 product).

12 ERC shall be fully accountable in that it will maintain adequate records to document and  
13 demonstrate how the ASP funds will be spent and can assure that the funds are being spent only  
14 for the proper, designated purposes described in this Consent Judgment. ERC shall provide the  
15 Attorney General, within thirty (30) days of any request, copies of documentation demonstrating  
16 how such funds have been spent.

17 **4.5** \$19,987.52 shall be distributed to ERC for its in-house legal fees. Except as  
18 explicitly provided herein, each Party shall bear its own fees and costs.

19 **4.6** In the event that Elemis fails to remit the Total Settlement Amount owed under  
20 Section 4 of this Consent Judgment on or before the Due Date, Elemis shall be deemed to be in  
21 material breach of its obligations under this Consent Judgment. ERC shall provide written  
22 notice of the delinquency to Elemis via electronic mail. If Elemis fails to deliver the Total  
23 Settlement Amount within five (5) business days from the written notice, the Total Settlement  
24 Amount shall accrue interest at the statutory judgment interest rate provided in the California  
25 Code of Civil Procedure section 685.010. Additionally, Elemis agrees to pay ERC's reasonable  
26 attorney's fees and costs for any efforts to collect the payment due under this Consent  
27 Judgment.

28



1     **5.    MODIFICATION OF CONSENT JUDGMENT**

2           **5.1**    This Consent Judgment may be modified only as to injunctive terms (i) by  
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment,  
4 or (ii) by motion of either Party pursuant to Sections 5.3 or 5.4 and upon entry by the Court of a  
5 modified consent judgment.

6           **5.2**    If Elemis seeks to modify this Consent Judgment under Section 5.1, then Elemis  
7 must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to meet and  
8 confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
9 written notice to Elemis within thirty (30) business days of receiving the Notice of Intent. If  
10 ERC notifies Elemis in a timely manner of ERC’s intent to meet and confer, then the Parties  
11 shall meet and confer in good faith as required in this Section. The Parties shall meet in person  
12 or via telephone within thirty (30) business days of ERC’s notification of its intent to meet and  
13 confer. Within thirty (30) business days of such meeting, if ERC disputes the proposed  
14 modification, ERC shall provide to Elemis a written basis for its position. The Parties shall  
15 continue to meet and confer for an additional thirty (30) business days in an effort to resolve  
16 any remaining disputes. Should it become necessary, the Parties may agree in writing to  
17 different deadlines for the meet-and-confer period.

18           **5.3**    Where the meet-and-confer process does not lead to a joint motion or  
19 application in support of a modification of the Consent Judgment, then either Party may seek  
20 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any  
21 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
22 section 1021.5.

23     **6.    RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
24     **JUDGMENT**

25           **6.1**    This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
26 this Consent Judgment.

27           **6.2**    If ERC alleges that any Covered Product fails to qualify as a Reformulated  
28 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall

1 inform Elemis in a reasonably prompt manner of its test results, including information  
2 sufficient to permit Elemis to identify the Covered Products at issue. Elemis shall, within thirty  
3 (30) business days following such notice, provide ERC with testing information, from an  
4 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
5 demonstrating Elemis' compliance with the Consent Judgment. The Parties shall first attempt  
6 to resolve the matter prior to ERC taking any further legal action.

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

8 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
9 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
10 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
11 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
12 application to any Covered Product which is distributed or sold exclusively outside the State of  
13 California, which is not used by California consumers, and which are diverted by third parties that  
14 are not authorized to sell the Covered Products.

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

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

1           **8.2**           ERC on its own behalf only, and Elemis on its own behalf only, further  
2 waive and release any and all claims they may have against each other for all actions or  
3 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
4 65 in connection with the Notice and Complaint up through and including the Effective Date,  
5 provided, however, that nothing in Section 8 shall affect or limit ay Party's right to seek to  
6 enforce the terms of this Consent Judgment.

7           **8.3**           It is possible that other claims not known to the Parties, arising out of the facts  
8 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
9 discovered. ERC on behalf of itself only and Elemis on behalf of itself only, acknowledge that  
10 this Consent Judgment is expressly intended to cover and include all such claims up through  
11 and including the Effective Date, including all rights of action therefore. ERC and Elemis  
12 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown  
13 claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown  
14 claims. California Civil Code Section 1542 reads as follows:

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

20           ERC on behalf of itself only and Elemis on behalf of itself only, acknowledge and understand  
21 the significance and consequences of this specific waiver of California Civil Code Section  
22 1542.

23           **8.4**           Compliance with the terms of this Consent Judgment shall be deemed to  
24 constitute compliance with Proposition 65 by any Releasee regarding alleged exposures to lead  
25 in the Covered Products as set forth in the Notice and Complaint.

26           **8.5**           Nothing in this Consent Judgment is intended to apply to any occupational or  
27 environmental exposures arising under Proposition 65, nor shall it apply to any of Elemis'  
28 products other than the Covered Products.

1     **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

4     **10. GOVERNING LAW**

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

7     **11. PROVISION OF NOTICE**

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

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

12 Chris Heptinstall, Executive Director, Environmental Research Center  
13 3111 Camino Del Rio North, Suite 400  
14 San Diego, CA 92108  
15 Tel: (619) 500-3090  
16 Email: chris\_erc501c3@yahoo.com

17 With a copy to:  
18 Anne Barker  
19 Environmental Research Center, Inc.  
20 3111 Camino Del Rio North, Suite 400  
21 San Diego, CA 92108  
22 Telephone: 619-500-3090  
23 Facsimile: 706-858-0326

24 **ELEMIS LTD and ELEMIS USA, INC.**

25 Sean Harrington  
26 CEO & President  
27 Elemis USA  
28 770 S. Dixie Highway, Suite 200  
Miami, FL 33146  
T: (305) 284-1442  
E: seanh@elemis.com

With a copy to:  
Ronie M. Schmelz  
Tucker Ellis LLP  
515 S Flower Street, FL 42  
Los Angeles, CA 90071

1 Telephone: 213-430-3375  
2 Facsimile: (213) 430-3409

3 **12. COURT APPROVAL**

4 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
5 Motion for Court Approval (“Motion”). The Parties shall use their best efforts to support entry  
6 of this Consent Judgment.

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

10 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
11 void and have no force or effect.

12 **13. EXECUTION AND COUNTERPARTS**

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

16 **14. DRAFTING**

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

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

26 If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
27 Judgment after entered by the Court, the Parties shall meet and confer in person, by telephone,  
28 and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion

1 may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

2 **16. ENFORCEMENT**

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

11 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

18 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

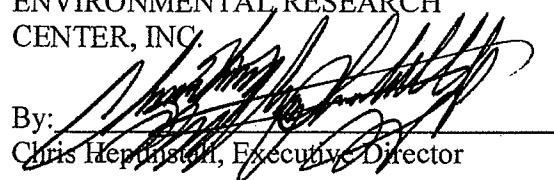
28 (2) Make the findings pursuant to California Health and Safety Code section

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 **IT IS SO STIPULATED:**


3 Dated: 12/11/, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

4  
5 By:   
6 Chris Hepburn, Executive Director


7 Dated: December 18, 2017

8 ELEMIS LTD

9   
10 By: \_\_\_\_\_  
11 Its: \_\_\_\_\_

12 Dated: December 18, 2017

ELEMIS USA, INC.

13   
14 By: \_\_\_\_\_  
15 Its: \_\_\_\_\_

16 Dated: \_\_\_\_\_, 2017

STEINER LEISURE LIMITED

17  
18 By: \_\_\_\_\_  
19 Its: \_\_\_\_\_

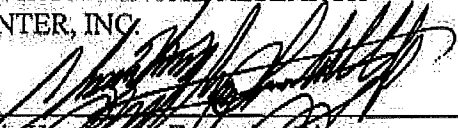
20  
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28

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 **IT IS SO STIPULATED:**

3 Dated: 12/11/, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Hepburn, Executive Director

7 Dated: \_\_\_\_\_, 2017

ELEMIS LTD

By:  
Its:

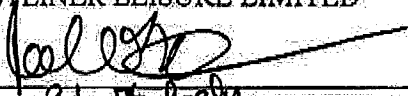
12 Dated: \_\_\_\_\_, 2017

ELEMIS USA, INC.

By:  
Its:

16 Dated: 12/14/, 2017

STEINER LEISURE LIMITED

By:   
Its: EUP, General Counsel

28



1 APPROVED AS TO FORM:

2 Dated: 12-11, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

3  
4 By: [Signature]  
Anne Barker  
In-House Counsel for Plaintiff

5  
6 Dated: **December 14**  
7 \_\_\_\_\_, 2017

TUCKER ELLIS LLP

8 By: [Signature]  
9 Ronie M. Schmelz  
10 Attorney for Defendants Elemis Ltd;  
Elemis, USA, Inc.; and Steiner Leisure  
Limited

11  
12 **ORDER AND JUDGMENT**

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

15 IT IS SO ORDERED, ADJUDGED AND DECREED.

16 Dated: \_\_\_\_\_, 2018

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



## Environmental Research Center

3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
619-500-3090

April 28, 2017

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

Dear Alleged Violators 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 Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to 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 Violators identified below.

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

**Elemis Ltd**  
**Elemis USA, Inc.**  
**Steiner Leisure Limited**

**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:

- 1. Elemis Sp@home Vitality Body Enhancement Capsules - Lead**
- 2. Elemis Invigorating Cal-Metab Plus Body Performance - Lead**
- 3. Elemis Contouring Silhouette Body Performance - Lead**
- 4. Elemis Cleansing Deep Drainage Body Performance - Lead**

April 28, 2017

Page 2

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.

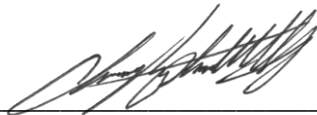
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 28, 2014, 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 Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to 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 Elemis Ltd, Elemis USA, Inc., Steiner Leisure Limited and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Elemis Ltd; Elemis USA, Inc.; and Steiner Leisure Limited**

I, Chris Heptinstall, declare:

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

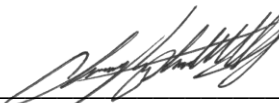
2. I am the Executive Director for the noticing party.

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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: April 28, 2017

  
\_\_\_\_\_  
Chris Heptinstall

April 28, 2017

Page 4

**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 April 28, 2017, 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 each of the parties 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  
Elemis Ltd  
2 Lancashire Court  
London  
W1S 1EX  
England

Current President or CEO  
Elemis Ltd  
1 Baker Street  
London  
W1U 8ED  
England

Current President or CEO  
Elemis Ltd  
92 Uxbridge Road  
Harrow  
HA3 6DQ  
England

Current President or CEO  
Elemis Ltd  
300 Nixon Lane  
Edison, NJ 08837

Current President or CEO  
Elemis USA, Inc.  
300 Nixon Lane  
Edison, NJ 08837

Current President or CEO  
Steiner Leisure Limited  
300 Nixon Lane  
Edison, NJ 08837

Current President or CEO  
Elemis Ltd  
770 South Dixie Hwy, #200  
Coral Gables, FL 33146

Current President or CEO  
Elemis USA, Inc.  
770 South Dixie Hwy, #200  
Coral Gables, FL 33146

Current President or CEO  
Steiner Leisure Limited  
770 South Dixie Hwy, #200  
Coral Gables, FL 33146

Current President or CEO  
Steiner Leisure Limited  
Suite 104A, Saffrey Square  
PO Box N-9306  
Nassau, The Bahamas

Corporation Service Company  
(Elemis USA, Inc.'s Registered Agent  
for Service of Process)  
1201 Hays Street  
Tallahassee, FL 32301

Corporation Service Company  
(Elemis USA, Inc.'s Registered Agent  
for Service of Process)  
80 State Street  
Albany, NY 12207

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

April 28, 2017

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On April 28, 2017, 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 April 28, 2017, 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 each of the parties listed below:

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

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

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

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

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto: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](mailto:edobroth@co.slo.ca.us)

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

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

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

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

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

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

April 28, 2017

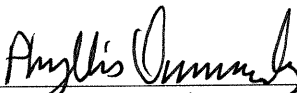
Page 6

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

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

On April 28, 2017, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on April 28, 2017, 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  
Hall of Justice  
211 West Temple St., Ste 1200  
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 92401

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:

Page 1

Date: April 28, 2017

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: April 28, 2017

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

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

Phone number: 619-500-3090

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

**Certification of Compliance**

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

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

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

**Certification**

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

\_\_\_\_\_  
Signature of alleged violator or authorized representative Date

\_\_\_\_\_  
Name and title of signatory

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

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

Revised: May 2014

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

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

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

## **HISTORY**

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

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

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