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PINES INTERNATIONAL, INCORPORATED  
12

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

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

18 **Plaintiff,**

19 **vs.**

20 **PINES INTERNATIONAL,**  
**INCORPORATED and DOES 1-100**

21 **Defendants.**  
22

CASE NO. RG17879899

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 20, 2017

Trial Date: None set

23 **1. INTRODUCTION**

24 **1.1** On October 20, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
25 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
26 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")  
27 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
28 ("Proposition 65"), against Pines International, Incorporated ("Pines International") and Does

1 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold  
2 by Pines International contain lead, a chemical listed under Proposition 65 as a carcinogen and  
3 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65  
4 warning. These products (referred to hereinafter individually as a "Covered Product" or  
5 collectively as "Covered Products") are: (1) The Wheat Grass People Pines Wheat Grass Juice  
6 Powder and (2) Pines The Wheat Grass People Mighty Greens Superfood Blend.

7 **1.2** ERC and Pines International are hereinafter referred to individually as a "Party"  
8 or collectively as the "Parties."

9 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
10 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
11 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
12 and encouraging corporate responsibility.

13 **1.4** For purposes of this Consent Judgment, the Parties agree that Pines International is  
14 a business entity that has employed ten or more persons at all times relevant to this action, and  
15 qualifies as a "person in the course of business" within the meaning of Proposition 65. Pines  
16 International manufactures, distributes, and/or sells the Covered Products.

17 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation  
18 dated July 28, 2017 that was served on the California Attorney General, other public enforcers,  
19 and Pines International ("Notice"). A true and correct copy of the 60-Day Notice dated July 28,  
20 2017 is attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60  
21 days have passed since the Notice was served on the Attorney General, public enforcers, and  
22 Pines International and no designated governmental entity has filed a complaint against Pines  
23 International with regard to the Covered Products or the alleged violations.

24 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes  
25 persons in California to lead without first providing clear and reasonable warnings in violation  
26 of California Health and Safety Code section 25249.6. Pines International denies all material  
27 allegations contained in the Notice and Complaint.  
28

1           **1.7**    The Parties have entered into this Consent Judgment in order to settle,  
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
4 be construed as an admission by any of the Parties or by any of their respective officers,  
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
6 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
7 violation of law.

8           **1.8**    Except as expressly set forth herein, nothing in this Consent Judgment shall  
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
10 current or future legal proceeding unrelated to these proceedings.

11           **1.9**    The Effective Date of this Consent Judgment is the date on which it is entered as  
12 a Judgment by this Court.

## 13    **2. JURISDICTION AND VENUE**

14           For purposes of this Consent Judgment and any further court action that may become  
15 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
16 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
17 over Pines International as to the acts alleged in the Complaint, that venue is proper in Alameda  
18 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
19 resolution of all claims up through and including the Effective Date which were or could have  
20 been asserted in this action based on the facts alleged in the Notice and Complaint.

## 21    **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

22           **3.1**    Beginning on the Effective Date, Pines International shall be permanently  
23 enjoined from manufacturing for sale in the State of California, "Distributing into the State of  
24 California", or directly selling in the State of California, any Covered Products which expose a  
25 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it  
26 meets the warning requirements under Section 3.2 or is otherwise excepted as provided in this  
27 Consent Judgment.

1           **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
2 of California” shall mean to directly ship a Covered Product into California for sale in  
3 California or to sell a Covered Product to a distributor that Pines International knows or has  
4 reason to know will sell the Covered Product in California.

5           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
6 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
7 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
8 product (using the largest serving size appearing on the product label), multiplied by servings  
9 of the product per day (using the largest number of servings in a recommended dosage  
10 appearing on the product label), which equals micrograms of lead exposure per day. If no  
11 recommended daily serving is provided on the label, then the daily serving shall equal one.

## 12           **3.2 Clear and Reasonable Warnings**

13           If Pines International is required to provide a warning pursuant to Section 3.1, one of the  
14 the following warnings in paragraphs Section 3.2.1. or 3.2.2. must be utilized (“Warning”):

15           **3.2.1. WARNING:** Consuming this product can expose you to chemicals  
16 including lead which is [are] known to the State of California to cause [cancer and]  
17 birth defects or other reproductive harm. For more information go to  
www.P65Warnings.ca.gov/food.

18           Pines International shall use the phrase “cancer and” in the Warning if Pines International  
19 has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead  
20 as determined pursuant to the quality control methodology set forth in Section 3.4 or if Pines  
21 International has reason to believe that another Proposition 65 chemical is present which may  
22 require a cancer warning.

23           The Warning shall be securely affixed to or printed upon the container or label of each  
24 Covered Product. In addition, for any Covered Product sold over the internet by Pines  
25 International, the Warning shall appear on the purchase page for the Covered Product or the  
26 checkout page when a California delivery address is indicated for any purchase of any Covered  
27 Product. When the warning appears only on the checkout page, an asterisk or other identifying  
28

1 method must be utilized to identify which products on the checkout page are subject to the  
2 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 Pines International's product  
5 packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No  
6 statements intended to or likely to have the effect of diminishing the impact of, or reducing the  
7 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no  
8 statements may accompany the Warning that state or imply that the source of the listed chemical  
9 has an impact on or results in a less harmful effect of the listed chemical.

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

14 **3.2.2.** Any safe harbor warning specified for food or dietary supplement products given  
15 in a form authorized by any Proposition 65 statutes or regulations effective on or after the  
16 Effective Date.

### 17 **3.3 Reformulated Covered Products**

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

### 21 **3.4 Testing and Quality Control Methodology**

22 **3.4.1** Beginning within one year of the Effective Date, Pines International  
23 shall arrange for lead testing of the Covered Products at least once a year for a minimum of  
24 three consecutive years by arranging for testing of three randomly selected samples of each of  
25 the Covered Products, in the form intended for sale to the end-user, which Pines International  
26 intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
27 California or "Distributing into the State of California."

28 **3.4.2** If tests conducted pursuant to this Section demonstrate that no Warning

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

6 **3.4.3** For purposes of measuring the "Daily Lead Exposure Level," the highest  
7 lead detection result of the three (3) randomly selected sample of the Covered Product from  
8 each lot sold in California will be controlling.

9 **3.4.4** All testing pursuant to this Consent Judgment shall be performed using a  
10 laboratory method that complies with the performance and quality control factors appropriate  
11 for the method used, including limit of detection, qualification, accuracy, and precision that  
12 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
13 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
14 method subsequently agreed to in writing by the Parties and approved by the Court through  
15 entry of a modified consent judgment. A result less than the limit of quantification is treated as  
16 a zero result.

17 **3.4.5** All testing pursuant to this Consent Judgment shall be performed by (i)  
18 an independent third party laboratory certified by the California Environmental Laboratory  
19 Accreditation Program or (ii) an independent third-party laboratory that is registered with the  
20 United States Food & Drug Administration or (iii) Eurofins laboratories, or Silliker laboratories  
21 or Medallion laboratories.

22 **3.4.6** Nothing in this Consent Judgment shall limit Pines International's ability  
23 to conduct, or require that others conduct, additional testing of the Covered Products, including  
24 the raw materials used in their manufacture.

25 **3.4.7** Within thirty (30) days of ERC's written request, Pines International  
26 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Pines International shall  
27 retain all test results and documentation for a period of five years from the date of each test.  
28

1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
3 attorney's fees, and costs, Pines International shall make a total payment of \$45,000.00 ("Total  
4 Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). Pines  
5 International shall make this payment by wire transfer to ERC's escrow account, for which  
6 ERC will give Pines International the necessary account information. The Total Settlement  
7 Amount shall be apportioned as follows:

8 **4.2** \$6,361.88 shall be considered a civil penalty pursuant to California Health and  
9 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$4,771.41) of the civil penalty to the  
10 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
11 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
12 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,590.47) of the civil penalty.

13 **4.3** \$2,835.87 shall be distributed to ERC as reimbursement to ERC for reasonable  
14 costs incurred in bringing this action.

15 **4.4** \$4,771.41 shall be distributed to ERC as an Additional Settlement Payment  
16 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
17 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
18 caused by Pines International in this matter. These activities are detailed below and support  
19 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
20 supplement products in California. ERC's activities have had, and will continue to have, a direct  
21 and primary effect within the State of California because California consumers will be benefitted  
22 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
23 providing clear and reasonable warnings to California consumers prior to ingestion of the  
24 products.

25 Based on a review of past years' actual budgets, ERC is providing the following list of  
26 activities ERC engages in to protect California consumers through Proposition 65 citizen  
27 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
28 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary

1 supplement products that may contain lead and are sold to California consumers. This work  
2 includes continued monitoring and enforcement of past consent judgments and settlements to  
3 ensure companies are in compliance with their obligations thereunder, with a specific focus on  
4 those judgments and settlements concerning lead. This work also includes investigation of new  
5 companies that ERC does not obtain any recovery through settlement or judgment; (2)  
6 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary  
7 Compliance Program by acquiring products from companies, developing and maintaining a case  
8 file, testing products from these companies, providing the test results and supporting  
9 documentation to the companies, and offering guidance in warning or implementing a self-  
10 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up  
11 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated  
12 products that reach California consumers by providing access to free testing for lead in dietary  
13 supplement products (Products submitted to the program are screened for ingredients which are  
14 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a  
15 qualified laboratory for testing, and the results shared with the consumer that submitted the  
16 product).

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

22 **4.5** \$13,955.00 shall be distributed to Michael Freund as reimbursement of ERC's  
23 attorney's fees, \$275.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
24 attorney's fees, while \$16,800.84 shall be distributed to ERC for its in-house legal fees. Except  
25 as explicitly provided herein, each Party shall bear its own fees and costs.

26 **4.6** In the event that Pines International fails to remit the Total Settlement Amount  
27 owed under Section 4 of this Consent Judgment on or before the Due Date, Pines International  
28 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC



1 shall provide written notice of the delinquency to Pines International via electronic mail. If  
2 Pines International fails to deliver the Total Settlement Amount within five (5) days from the  
3 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment  
4 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,  
5 Pines International agrees to pay ERC's reasonable attorney's fees and costs for any efforts to  
6 collect the payment due under this Consent Judgment.

## 7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
9 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
10 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
11 modified consent judgment.

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

24 **5.3** In the event that Pines International initiates or otherwise requests a modification  
25 under Section 5.1, and the meet and confer process leads to a joint motion or application of the  
26 Consent Judgment, Pines International shall reimburse ERC its costs and reasonable attorney's  
27 fees for the time spent in the meet-and-confer process and filing and arguing the motion or  
28 application.

1           **5.4**   Where the meet-and-confer process does not lead to a joint motion or  
2 application in support of a modification of the Consent Judgment, then either Party may seek  
3 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any  
4 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
5 section 1021.5.

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 Pines International in a reasonably prompt manner of its test results, including  
13 information sufficient to permit Pines International to identify the Covered Products at issue.  
14 Pines International shall, within thirty (30) days following such notice, provide ERC with  
15 testing information, from an independent third-party laboratory meeting the requirements of  
16 Sections 3.4.3 and 3.4.4, demonstrating Pines International's compliance with the Consent  
17 Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking  
18 any further legal action.

19          **7. APPLICATION OF CONSENT JUDGMENT**

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

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

27          **8.1**   This Consent Judgment is a full, final, and binding resolution between ERC, on  
28 behalf of itself and in the public interest, and Pines International and its respective officers,

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

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

18 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
19 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
20 discovered. ERC on behalf of itself only, and Pines International on behalf of itself only,  
21 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
22 claims up through and including the Effective Date, including all rights of action therefore.  
23 ERC and Pines International acknowledge that the claims released in Sections 8.1 and 8.2  
24 above may include unknown claims, and nevertheless waive California Civil Code section  
25 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

1 ERC on behalf of itself only, and Pines International 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 Pines  
9 International'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 **PINES INTERNATIONAL, INCORPORATED**

3 Tina Bruner

4 General Manager

5 Pines International, Inc.

6 PO Box 927 / 1992 East 1400 Rd

7 Lawrence, Kansas 66044

8 Telephone: 800-697-4637

9 E-mail: tbruner@wheatgrass.com

10 With a copy to:

11 George C. Salmas

12 The Food Lawyers®

13 1880 Century Park East, Suite 611

14 Los Angeles, CA 90067

15 Telephone: (310) 556-0721

16 Facsimile: (310) 788-8923

17 E-mail: George.Salmas@TheFoodLawyers.com

18 **12. COURT APPROVAL**

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

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

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

27 **13. EXECUTION AND COUNTERPARTS**

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

**14. DRAFTING**

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

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

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

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

12 **16. ENFORCEMENT**

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

21 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

1           **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
2 authorized by the Party he or she represents to stipulate to this Consent Judgment.

3 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
4 **CONSENT JUDGMENT**

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

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

11           (2) Make the findings pursuant to California Health and Safety Code section  
12 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

13 **IT IS SO STIPULATED:**

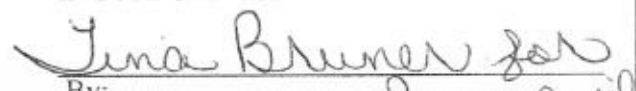
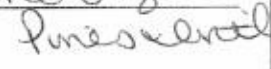
14 Dated: 1/15/, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Henthurst, Executive Director

18 Dated: 1/23/, 2018

PINES INTERNATIONAL,  
INCORPORATED

By:   
Its: 

23 **APPROVED AS TO FORM:**

1 Dated: 1/24/, 2018

MICHAEL FREUND & ASSOCIATES

2  
3 By: mf  
4 Michael Freund  
5 Ryan Hoffman  
6 Attorneys for Plaintiff Environmental  
7 Research Center, Inc.

8 Dated: 1/24, 2018

THE FOOD LAWYERS

9 By: George C. Salmas  
10 George C. Salmas  
11 Attorney for Pines International,  
12 Incorporated

13 **ORDER AND JUDGMENT**

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17 Dated: \_\_\_\_\_, 2018

18 \_\_\_\_\_  
19 Judge of the Superior Court



EXHIBIT A

---

**Michael Freund & Associates**

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

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

July 28, 2017

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Pines International, Incorporated**

**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. The Wheat Grass People Pines Wheat Grass Juice Powder - Lead**
- 2. Pines The Wheat Grass People Mighty Greens Superfood Blend - 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 recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

July 28, 2017

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**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least July 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 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.

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

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Pines International, Incorporated 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 Pines International, Incorporated**

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: July 28, 2017

  
\_\_\_\_\_  
Michael Freund

**CERTIFICATE OF SERVICE PURSUANT 27 CCR § 25903**

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 and over the age of 18 years of age. 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 July 28, 2017, between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Pines International, Incorporated  
1992 East 1400 Road  
Lawrence, KS 66044

Ronald L. Seibold  
(Pines International, Incorporated's Registered Agent for  
Service of Process)  
1040 East 23<sup>rd</sup> Street  
Lawrence, KS 66046

Current CEO or President  
Pines International, Incorporated  
Post Office Box 927  
Lawrence, KS 66044

On July 28, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On July 28, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to 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)

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

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

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

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

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

July 28, 2017

Page 5

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

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

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

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

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

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

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

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

On July 28, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on July 28, 2017, in Fort Oglethorpe, Georgia.

---

Phyllis Dunwoody

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

July 28, 2017

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92401	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230			

**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: July 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: July 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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