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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

VITAL PROTEINS, LLC and DOES 1-100

Defendants.

CASE NO. RG18905420

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 17, 2018

Trial Date: None set

1. INTRODUCTION

1.1 On May 17, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Vital Proteins, LLC (“Vital Proteins”) and Does 1-100. In this

1 action, ERC alleges that certain products manufactured, distributed, or sold by Vital Proteins
2 contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and
3 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
4 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
5 collectively as “Covered Products”) are all sizes, all forms of packaging and labeling of: (1)
6 Vital Proteins Grass Fed Pasture Raised Collagen Whey Cocoa & Coconut Water (internal
7 UPC Codes 850232005195 and X000UJOVXT) (now called Vital Proteins Collagen Whey
8 Protein Dark Chocolate and Coconut Water), (2) Vital Proteins Collagen Veggie Blend
9 (internal UPC Codes 850232005539, 850502008284, and X001D9YQLR), (3) Vital Proteins
10 Collagen Peptides Dark Chocolate & Blackberry (internal UPC Codes 850232005904 and
11 850232005898), and (4) Vital Proteins Grass Fed Pasture Raised Collagen Peptides Vanilla &
12 Coconut Water (internal UPC Codes 850232005324, 850232005348, X0014FBGTF, and
13 X0014F783X). Covered Products shall include those products with minor variations in
14 formulation so long as they have the same internal UPC codes as the Covered Products. Vital
15 Proteins shall not change the internal UPC Codes for the Covered Products during the term of
16 this Agreement, but Vital Proteins may terminate any given UPC Code if it elects to terminate a
17 Covered Product.

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

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

24 **1.4** For purposes of this Consent Judgment (or “Agreement”), Vital Proteins represents
25 that it has employed ten or more persons at times relevant to this action, and qualifies as a “person
26 in the course of doing business” within the meaning of Proposition 65. Vital Proteins has either
27 manufactured, and/or distributed, and/or sold the Covered Products at times material to this action.

28 **1.5** The Complaint is based on allegations contained in ERC’s 60-Day Notice of

1 Violation dated November 14, 2017 that was served on the California Attorney General, other
2 public enforcers, and Vital Proteins (“Notice”). A true and correct copy of the 60-Day Notice
3 dated November 14, 2017 is attached hereto as **Exhibit A** and incorporated herein by reference.
4 More than 60 days have passed since the Notice was served on the Attorney General, public
5 enforcers, and Vital Proteins and no designated governmental entity has filed a complaint
6 against Vital Proteins with regard to the Covered Products or the alleged violations.

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

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

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

21 **1.9** The Effective Date of this Consent Judgment is the date on which ERC serves
22 notice on Vital Proteins that it has been entered as a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

24 For purposes of this Consent Judgment and any further court action that may become
25 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
26 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
27 over Vital Proteins as to the acts alleged in the Complaint, personal jurisdiction over ERC, that
28 venue is proper in Alameda County, and that this Court has jurisdiction to enter this Consent

1 Judgment as a full and final resolution of all claims up through and including the Effective Date
2 which were or could have been asserted in this action based on the facts alleged in the Notice and
3 Complaint.

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

5 **3.1** Beginning on August 15, 2018, (the “Compliance Date,”) Vital Proteins shall be
6 permanently enjoined from manufacturing for sale in the State of California, “Distributing into
7 the State of California,” or directly selling in the State of California, any Covered Products
8 which expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead
9 per day, or to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium
10 per day, or both, unless it meets the warning requirements under Section 3.2. Notwithstanding
11 the foregoing, so long as Vital Proteins can document the date of manufacture of a Covered
12 Product and provide proof of the date of manufacture to ERC if requested, Covered Products
13 manufactured prior to the Compliance Date may be distributed or sold by any person without a
14 “Warning” (defined below) after the Compliance Date without violation of this Consent
15 Judgment.

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

20 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
21 Level” shall be measured in micrograms, and shall be calculated using the following formula:
22 micrograms of lead per gram of product, multiplied by grams of product per serving of the
23 product (using the largest serving size recommended on the Covered Product label), multiplied
24 by servings of the product per day (using the largest number of servings recommended on the
25 Covered Product label for a single day of consumption), *minus* the amount of “Naturally
26 Occurring Lead” (as outlined in Section 3.1.4), which equals micrograms of lead exposure per
27 day. If the number of recommended daily servings is not provided on the label, then the
28

1 number of daily servings shall equal one, as defined by a single serving on the nutrition fact
2 panel or supplement fact panel on the label.

3 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:
5 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
6 product (using the largest serving size recommended on the Covered Product label), multiplied
7 by servings of the product per day (using the largest number of servings recommended on the
8 Covered Product label for a single day of consumption), which equals micrograms of cadmium
9 exposure per day. If the number of recommended daily servings is not provided on the label,
10 then the number of daily servings shall equal one, as defined by a single serving on the
11 nutrition fact panel or supplement fact panel on the label.

12 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product, Vital
13 Proteins shall be allowed to deduct the amount of lead which is deemed to be Naturally
14 Occurring Lead in any ingredient listed in **Table 1** (“Lead Ingredient”) that is contained in that
15 Covered Product under the following conditions: (a) Vital Proteins itself or from its Lead
16 Ingredient supplier shall obtain either (i) a valid test result showing lead is present in the Lead
17 Ingredient at a specific concentration or in a range; or (ii) a certificate of analysis or certificate of
18 compliance that shows lead is present in the Lead Ingredient at a specific concentration or in a
19 range; and (b) Vital Proteins shall obtain the documentation in Section 3.1.4(a) (i) or (ii) for at
20 least two delivered lots of a Lead Ingredient listed in Table 1, if up to four (4) lots of that Lead
21 Ingredient are delivered within twelve (12) months of the Effective Date, and documentation for
22 at least three (3) lots of a Lead Ingredient if up to eight (8) lots of that Lead Ingredient are
23 delivered within twelve (12) months of the Effective Date, and documentation for at least four
24 (4) lots of a Lead Ingredient if nine (9) or more lots of that Lead Ingredient are delivered within
25 twelve (12) months of the Effective Date; and (c) Vital Proteins shall document the total amount
26 (in grams) of each Lead Ingredient contained in the Covered Product. If the documentation
27 obtained pursuant to Section 3.1.4(a) and (b) documents the presence of lead in any Lead
28 Ingredient in **Table 1**, Vital Proteins shall be entitled to deduct the amount of the Naturally

1 Occurring Lead for that Lead Ingredient, as listed in **Table 1**. If the Covered Product does not
2 contain a Lead Ingredient listed in **Table 1**, Vital Proteins shall not be entitled to a deduction for
3 the Naturally Occurring Lead in Table 1 for that Covered Product.

4 To deduct the Naturally Occurring Lead in any Covered Product for purposes of
5 determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this
6 Section 3.1.4, Vital Proteins shall provide to ERC, within thirty (30) days after the first
7 anniversary of the Effective Date, the documentation required under Section 3.1.4(a)-(c).
8 Thereafter, for three (3) additional consecutive anniversaries after the Effective Date, if Vital
9 Proteins deducts Naturally Occurring Lead in a Lead Ingredient in calculating the Daily Lead
10 Exposure Level, Vital Proteins shall provide to ERC, within thirty (30) days after each such
11 anniversary date, the documentation for each Lead Ingredient required under Section 3.1.4(a)-(c)
12 for each such applicable twelve (12) month period.

13 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	0.8 micrograms/gram (up to a maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)
Cocoa-powder	1.0 micrograms/gram

19
20 **3.2 Clear and Reasonable Warnings**

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

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

26 Vital Proteins shall use the phrase “cancer and” in the Warning if Vital Proteins has
27 documented or is in possession of representative test results indicating that the “Daily Lead
28 Exposure Level” is greater than fifteen (15) micrograms of lead as determined pursuant to Section

1 3.1 and Section 3.4 or if Vital Proteins is legally obligated to provide a cancer warning for a
2 Proposition 65 chemical other than lead or cadmium. As identified in the brackets, the Warning
3 shall accurately state whether the Warning is being provided for lead, cadmium, or both, or for
4 other chemicals in each of the Covered Products. Vital Proteins shall bear the obligation of
5 providing an accurate form of warning for each Covered Product.

6 The Warning shall be securely affixed to or printed upon the container or label of each
7 Covered Product. If the Warning is provided on the label, it must be set off from other
8 surrounding information and enclosed in a box. The Warning on the container or label shall be
9 at least the same size as other warnings on the Covered Product container or label so long as it
10 remains clearly visible and readable to the consumer. In addition, for any Covered Product sold
11 over the internet by or through Vital Proteins' own website, the Warning shall either (a) appear
12 on the product display page on which the Covered Product is identified (but may not be provided
13 via a hyperlink on that product display page), or (b) appear to the purchaser, not via a hyperlink,
14 during the check out process and prior to completion thereof when a California delivery address
15 is indicated for the purchase of any Covered Product. An asterisk or other method of identifying
16 the existence of the Warning must be utilized so the purchaser may readily identify the specific
17 Covered Product(s) subject to the Warning.

18 For Covered Products sold over the internet by or through Vital Proteins' own website, the
19 Warning shall be at least the same size as other health or safety warnings also appearing on the
20 product display page on Vital Proteins' website. For all Warnings, the word "**WARNING**" shall
21 be in all capital letters and in bold print. Statements supplemental to the Warning which are
22 immediately proximate thereto are allowed only to the extent they identify the source of the
23 exposure or provide information on how consumers of the Covered Product may avoid or reduce
24 exposure to the identified chemical or chemicals. Except as set forth in the immediately preceding
25 sentence, no statements shall appear adjacent to the Warning and, specifically, no statements
26 adjacent to the Warning may state that the source of the listed chemical renders the listed chemical
27 non-harmful or healthful.

28 ///

1 Vital Proteins must display the Warning with such conspicuousness, as compared with
2 other words, statements, or designs on the label or container, or on its website, if applicable, so as
3 to render the Warning likely to be read and understood by an ordinary individual under customary
4 conditions of purchase or use of the Covered Product.

5 **3.3 Reformulated Covered Products**

6 A Reformulated Covered Product is a Covered Product for which the “Daily Lead
7 Exposure Level” is no greater than 0.5 micrograms of lead per day and the “Daily Cadmium
8 Exposure Level” is no more than 4.1 micrograms of cadmium per day as determined pursuant to
9 Section 3.1 and Section 3.4, and for which the Uniform Product Code (UPC) remains the same.

10 **3.4 Testing and Quality Control Methodology**

11 **3.4.1** Beginning within one (1) year of the Effective Date, Vital Proteins shall
12 arrange for lead and cadmium testing of the Covered Products at least once a year for a
13 minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected
14 samples from different lots of each of the Covered Products, in the form intended for sale to the
15 end-user, which Vital Proteins intends to sell or is manufacturing for sale in California, directly
16 selling to a consumer in California or “Distributing into the State of California.” If three (3) or
17 more lots of a given Covered Product are not available at the time of such sampling, then the
18 samples shall be selected from such number of lots as are available. If tests conducted pursuant
19 to this Section demonstrate that no Warning is required for a Covered Product during each of
20 three (3) consecutive years, then the testing requirements of this Section will no longer be
21 required as to that Covered Product; provided, however, that Vital Proteins shall not be
22 required under this Consent Judgment to test any Covered Product for more than four (4)
23 consecutive years from the Effective Date. Nothing in this Section 3.4.1 shall diminish Vital
24 Protein’s ongoing obligation to provide an accurate Warning when required hereunder.

25 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
26 “Daily Cadmium Exposure Level,” the average (arithmetic mean) of the lead and/or cadmium
27 detection results of the three (3) randomly selected samples of the Covered Products will be
28 controlling for all purposes under this Consent Judgment.

1 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

6 **3.4.4** All testing pursuant to this Consent Judgment by Vital Proteins shall be
7 performed by an independent third party laboratory certified by the California Environmental
8 Laboratory Accreditation Program or an independent third-party laboratory that is registered
9 with the United States Food & Drug Administration.

10 **3.4.5** Nothing in this Consent Judgment shall limit Vital Proteins’ ability to
11 conduct, or require that others conduct, additional testing of the Covered Products, including
12 the raw materials used in their manufacture.

13 **3.4.6** Within thirty (30) days of ERC’s written request, Vital Proteins shall
14 deliver lab reports obtained pursuant to Section 3.4 to ERC. Vital Proteins shall retain all test
15 results and documentation required under this Consent Judgment for a period of three (3) years
16 from the date of each test. ERC shall not request such lab reports more than once annually,
17 absent good cause to do so.

18 **3.4.7** No testing shall be required for a Covered Product which includes a
19 Warning compliant with Section 3.2 on the label, container, or on Vital Proteins’ proprietary
20 website or for a Covered Product that is no longer manufactured, a Covered Product which is not
21 sold in California, or, with respect to internet sales by and through Vital Proteins’ own website, a
22 Covered Product that is not shipped to a California shipping address or for a Covered Product
23 that is merely transshipped through California (i.e., remains unopened) to a retailer or distributor
24 outside of California that does not sell that particular Covered Product to persons inside of
25 California.

26 **4. SETTLEMENT PAYMENT**

27 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
28 attorney’s fees, and costs, Vital Proteins shall make a total payment of \$92,500.00 (“Total

1 Settlement Amount”) to ERC within five (5) business days of the Effective Date (“Due Date”).
2 Vital Proteins shall make this payment by wire transfer to ERC’s account, for which ERC will
3 give Vital Proteins the necessary account information and taxpayer information at least five (5)
4 business days prior to the Effective Date. The Total Settlement Amount shall be apportioned as
5 follows:

6 **4.2** \$20,595.55 shall be considered a civil penalty pursuant to California Health and
7 Safety Code section 25249.7(b)(1). Within ten (10) business days ERC shall remit 75%
8 (\$15,446.66) of the civil penalty to the Office of Environmental Health Hazard Assessment
9 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in
10 accordance with California Health and Safety Code section 25249.12(c). ERC will retain the
11 remaining 25% (\$5,148.89) of the civil penalty.

12 **4.3** \$6,074.87 shall be distributed to ERC as reimbursement to ERC for reasonable
13 costs incurred in bringing this action.

14 **4.4** \$15,446.64 shall be distributed to ERC as an Additional Settlement Payment
15 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
16 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
17 caused by Defendant in this matter. These activities are detailed below and support ERC’s
18 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
19 supplement products in California. ERC’s activities have had, and will continue to have, a direct
20 and primary effect within the State of California because California consumers will be benefitted
21 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
22 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
23 the products.

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

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

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

21 **4.5** \$3,510.00 shall be distributed to Michael Freund as reimbursement of ERC's
22 attorney's fees, \$15,015.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
23 attorney's fees, while \$31,857.94 shall be distributed to ERC for its in-house legal fees. Except
24 as explicitly provided herein, each Party shall bear its own fees and costs.

25 **4.6** In the event that Vital Proteins fails to remit the Total Settlement Amount owed
26 under Section 4 of this Consent Judgment on or before the Due Date, subject to a two (2)
27 business day grace period during which ERC may provide informal notice it has not received
28 payment, Vital Proteins shall be deemed to be in material breach of its obligations under this

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

7 **5. MODIFICATION OF CONSENT JUDGMENT**

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

12 **5.2** If any Party seeks to modify this Consent Judgment under Section 5.1, then that
13 Party must provide written notice to the other Party of its intent ("Notice of Intent"). The
14 Parties shall meet and confer in good faith regarding the proposed modification in the Notice of
15 Intent within thirty (30) days of receiving the Notice of Intent. Within thirty (30) days of such
16 meeting, if there remains a dispute as to the proposed modification, the Party disputing the
17 modification shall provide to the other Party a written basis for its position. The Parties shall
18 continue to meet and confer for an additional thirty (30) days in an effort to resolve any
19 remaining disputes. Should it become necessary, the Parties may agree in writing to different
20 deadlines for the meet-and-confer period.

21 **5.3** In the event that Vital Proteins initiates or otherwise requests a modification
22 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
23 modification of the Consent Judgment, Vital Proteins shall reimburse ERC its costs and
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
25 arguing the motion or application. ERC shall not be reimbursed for costs or attorney's fees for
26 an uncontested motion, or for a ministerial motion (such as a change in name or contact
27 information) or if ERC does not expend more than two (2) hours of attorney time on the joint
28 motion.

1 **5.4** Where the meet-and-confer process does not lead to an uncontested motion or to
2 a joint motion or application in support of a modification of the Consent Judgment, then either
3 Party may seek judicial relief on its own.

4 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
5 **JUDGMENT**

6 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
7 this Consent Judgment. This Consent Judgment may be enforced solely by the Parties hereto,
8 including their respective successors or assigns, provided each Party identifies any such
9 successor or assign in writing to the other Party.

10 **6.2** If ERC alleges that any Covered Product failed or fails to bear a Warning with
11 respect to lead or cadmium and was manufactured for sale in the State of California,
12 “Distributed into the State of California,” or directly sold in the State of California in violation
13 of this Consent Judgment, then ERC shall inform Vital Proteins in a reasonably prompt manner
14 of its test results, including information sufficient to permit Vital Proteins to identify the
15 Covered Products at issue, and of ERC’s calculation of the Daily Lead Exposure Level or the
16 Daily Cadmium Exposure Level, as applicable. Vital Proteins shall, within thirty (30) days
17 following such notice, provide ERC with testing information, from an independent third-party
18 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, and may also provide other
19 relevant information it may wish to present to ERC, if any, demonstrating Vital Proteins’
20 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve
21 the matter prior to ERC taking any further legal action.

22 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
3 behalf of itself and in the public interest, and Vital Proteins and its respective officers,
4 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
5 manufacturers, franchisees, licensees, customers (not including private label customers of Vital
6 Proteins), distributors, wholesalers, retailers, and all other upstream and downstream entities in
7 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of
8 any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public
9 interest, hereby fully releases and discharges the Released Parties from any and all claims,
10 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
11 expenses asserted, or that could have been asserted from the handling, use, or consumption of
12 the Covered Products manufactured on or prior to the Effective Date, as to any alleged
13 violation of Proposition 65 or its implementing regulations arising from the failure to provide
14 Proposition 65 warnings on the Covered Products regarding lead and/or cadmium up to and
15 including the Effective Date.

16 **8.2** ERC on its own behalf only, and Vital Proteins on its own behalf only, further
17 waive and release any and all claims they may have against each other for all actions or
18 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
19 65 in connection with the Notice and Complaint up through and including the Effective Date,
20 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
21 enforce the terms of this Consent Judgment.

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

1 any such unknown claims. California Civil Code section 1542 reads as follows:

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

7 ERC on behalf of itself only, and Vital Proteins on behalf of itself only, acknowledge and
8 understand the significance and consequences of this specific waiver of California Civil Code
9 section 1542.

10 **8.4** Compliance with the terms of this Consent Judgment by Vital Proteins shall be
11 deemed to constitute compliance with Proposition 65 by any Released Party regarding alleged
12 exposures to lead and/or cadmium in the Covered Products as set forth in the Notice and
13 Complaint after the Effective Date.

14 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
15 environmental exposures arising under Proposition 65, nor shall it apply to any of Vital
16 Proteins' products other than the Covered Products.

17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

20 **10. GOVERNING LAW**

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

23 **11. PROVISION OF NOTICE**

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

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

2 Chris Heptinstall
3 Executive Director
4 Environmental Research Center
5 3111 Camino Del Rio North, Suite 400
6 San Diego, CA 92108
7 Telephone: (619) 500-3090
8 Email: chris_erc501c3@yahoo.com

9 With a copy to:

10 Michael Freund
11 Ryan Hoffman
12 Michael Freund & Associates
13 1919 Addison Street, Suite 105
14 Berkeley, CA 94704
15 Telephone: (510) 540-1992
16 Facsimile: (510) 540-5543

17 **FOR VITAL PROTEINS, LLC:**

18 Kurt Seidensticker
19 Chief Executive Officer
20 Vital Proteins, LLC
21 30 North Racine Avenue, Suite 202
22 Chicago, IL 60607
23 Telephone: (312) 488-5665 (direct) or (224) 544-9110 x7000 (main)

24 With a copy to:

25 Judith Praitis
26 Sidley Austin LLP
27 555 West Fifth Street, Suite 4000
28 Los Angeles, California 90013-1010
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

12. **COURT APPROVAL**

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for Court Approval. Vital Proteins shall not object to judicial approval of the Consent Judgment in the form it was executed and, upon request of ERC, shall file a Statement of Non-Opposition to these Consent Judgment terms.

12.2 If the California Attorney General objects to any term in this Consent Judgment,

1 the Parties shall meet and confer with the Attorney General, or with each other, as applicable,
2 to attempt in good faith to resolve the concern in a timely manner and, if possible, prior to the
3 hearing on the Motion for Court Approval.

4 **12.3** If this Stipulated Consent Judgment is not approved by the Court in the form it
5 was executed within one (1) year of execution by all Parties, it shall be void and have no force
6 or effect.

7 **13. EXECUTION AND COUNTERPARTS**

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

11 **14. DRAFTING**

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

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

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

25 **16. ENFORCEMENT**

26 This Consent Judgment may be enforced exclusively by the Parties hereto. ERC may, by
27 motion or order to show cause before the Superior Court of Alameda County, enforce the terms
28 and conditions contained in this Consent Judgment. In any action brought by ERC to enforce

1 this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are
2 provided by law for failure to comply with the Consent Judgment.

3 **17. ENTIRE AGREEMENT, AUTHORIZATION**

4 **17.1** This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter herein, and any and all
6 prior discussions, negotiations, commitments, and understandings related hereto. No
7 representations, oral or otherwise, express or implied, other than those contained herein have
8 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
9 herein, shall be deemed to exist or to bind any Party.

10 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the Party he or she represents to stipulate to this Consent Judgment.

12 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
13 **CONSENT JUDGMENT**

14 This Consent Judgment has come before the Court upon the request of the Plaintiff. The
15 Plaintiff requests the Court to fully review this Consent Judgment and, being fully informed
16 regarding the matters which are the subject of this action, to:

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

20 (2) Make the findings pursuant to California Health and Safety Code section
21 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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1 **IT IS SO STIPULATED:**

2 Dated: 5/23/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC

By: 
Chris Heppner, Executive Director

6 Dated: 6/1, 2018

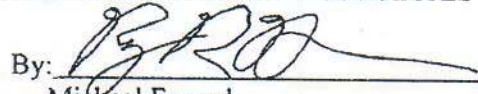
VITAL PROTEINS, LLC


By: Kurt Seidensticker
Its: Chief Executive Officer

10 **APPROVED AS TO FORM:**


11 Dated: 5/23, 2018

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

17 Dated: May 25, 2018

SIDLEY AUSTIN LLP

By: 
Judith Pratis
Attorneys for Defendant Vital Proteins,
LLC

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1 **ORDER AND JUDGMENT**

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

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6 Dated: _____, 2018

7 _____
8 Judge of the Superior Court
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EXHIBIT A—NOTICE OF VIOLATION

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.

November 14, 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:

Vital Proteins, LLC

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

- 1. Vital Proteins Grass Fed Pasture Raised Collagen Whey Cocoa & Coconut Water – Lead, Cadmium**
- 2. Vital Proteins Collagen Veggie Blend – Lead, Cadmium**
- 3. Vital Proteins Collagen Peptides Dark Chocolate & Blackberry - Lead**
- 4. Vital Proteins Grass Fed Pasture Raised Collagen Peptides Vanilla & Coconut Water - Lead**

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

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

Exhibit A

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 these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 14, 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 these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

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 or at rrhoffma@gmail.com.**

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Vital Proteins, LLC and its 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 Vital Proteins, LLC

I, Ryan Hoffman, 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.

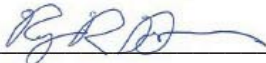
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

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

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

Dated: November 14, 2017



Ryan Hoffman

CERTIFICATE OF SERVICE PURSUANT TO 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 November 14, 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 President or CEO
Vital Proteins, LLC
545 Busse Road
Elk Grove Village, IL 60007

CT Corporation System (C0168406)
(Vital Proteins, LLC’s Registered
Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Current President or CEO
Vital Proteins, LLC
975 Bryn Mawr Avenue
Bensenville, IL 60106

Laura C Seidensticker
(Vital Proteins, LLC’s Registered
Agent for Service of Process)
1483 Patriot Boulevard
Glenview, IL 60026

The Corporation Trust Company
(Vital Proteins, LLC’s Registered
Agent for Service of Process)
Corporation Trust Center
1209 North Orange Street
Wilmington, DE 19801

On November 14, 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 November 14, 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:

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

November 14, 2017

Page 5

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

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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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, 4th 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

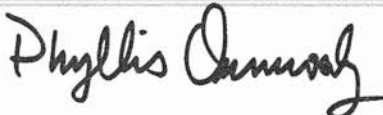
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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
cfehd@yolocounty.org

On November 14, 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 November 14, 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 4th Floor
Eureka, CA 95501

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

District Attorney, Inyo County
P.O. Drawer D
Independence, CA 93526

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. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known 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 Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

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

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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.