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12 SUNDIA CORPORATION, individually and doing business as  
GOOD GREENS  
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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF ALAMEDA**

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

20 **Plaintiff,**

21 **vs.**

22 **SUNDIA CORPORATION, individually**  
23 **and doing business as GOOD GREENS;**  
24 **and DOES 1-100**

25 **Defendant.**

CASE NO. RG18916396

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 6, 2018

Trial Date: None set

26 **1. INTRODUCTION**

27 **1.1** On August 13, 2018 Plaintiff Environmental Research Center, Inc. ("ERC"),  
28 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")  
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
3 ("Proposition 65"), against Sundia Corporation, individually and doing business as Good Greens  
4 (hereinafter "Good Greens"), and Does 1-100. In this action, ERC alleges that a number of  
5 products manufactured, distributed, or sold by Good Greens contain lead, a chemical listed under  
6 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at  
7 a level requiring a Proposition 65 warning. These products (referred to hereinafter individually  
8 as a "Covered Product" or collectively as "Covered Products") are all sizes and all forms of  
9 packaging and labeling of:

- 10 (1) Good! Greens Wildberry,
- 11 (2) Good! Greens Chocolate Coconut,
- 12 (3) Good! Greens Chocolate Raspberry,
- 13 (4) Good! Greens Chocolate Peanut Butter,
- 14 (5) Good! Greens Chocolate Mint,
- 15 (6) Good! Greens Chocolate Chunk, and
- 16 (7) Good! Greens Apple Crumb Yogurt.

17 Covered Products shall include those products with minor variations in formulation so long as  
18 they have the same internal UPC codes as the Covered Products. Good Greens shall not change  
19 the internal UPC Codes for the Covered Products during the term of this Agreement, but Good  
20 Greens may terminate any given UPC Code if it elects to terminate a Covered Product.

21 **1.2** ERC and Good Greens are hereinafter referred to individually as a "Party" or  
22 collectively as the "Parties."

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

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1           **1.4** For purposes of this Consent Judgment, the Parties agree that Good Greens is a  
2 business entity that has employed ten or more persons at times relevant to this action and qualifies  
3 as a “person in the course of doing business” within the meaning of Proposition 65. Good Greens  
4 has either manufactured, distributed, and/or sold the Covered Products at times material to this  
5 action.

6           **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
7 dated May 1, 2018 and June 1, 2018 that were served on the California Attorney General, other  
8 public enforcers, and Good Greens (“Notices”). True and correct copies of the 60-Day Notices  
9 dated May 1, 2018 and June 1, 2018 are attached hereto as **Exhibits A and B** respectively and  
10 each is incorporated herein by reference. ERC agrees that, at the time the Motion to Approve  
11 this Consent Judgment is heard, more than 60 days will have passed since the Notices were  
12 served on the Attorney General, public enforcers, and Good Greens and no designated  
13 governmental entity has filed a complaint against Good Greens with regard to the Covered  
14 Products or the alleged violations.

15           **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes  
16 persons in California to lead without first providing clear and reasonable warnings in violation  
17 of California Health and Safety Code section 25249.6. Good Greens denies all material  
18 allegations contained in the Notices and Complaint.

19           **1.7** The Parties have entered into this Consent Judgment in order to settle,  
20 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
21 Nothing in this Consent Judgment, nor compliance with this Consent Judgment, shall constitute  
22 or be construed as an admission against interest by any of the Parties or by any of their respective  
23 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
24 franchisees, licensees, customers, suppliers, manufacturers, distributors, wholesalers, or retailers  
25 of any fact, issue of law, or violation of law.

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1           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
3 current or future legal proceeding unrelated to these proceedings.

4           **1.9**     The Effective Date of this Consent Judgment is the date on which ERC serves  
5 notice on Good Greens that it has been entered as a Judgment by this Court.

6           **2.     JURISDICTION AND VENUE**

7           For purposes of this Consent Judgment and any further court action that may become  
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
9 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
10 over Good Greens as to the acts alleged in the Complaint, personal jurisdiction over ERC, that  
11 venue is proper in Alameda County, and that this Court has jurisdiction to enter this Consent  
12 Judgment as a full and final resolution of all claims up through and including the Effective Date  
13 which were or could have been asserted in this action based on the facts alleged in the Notices and  
14 Complaint.

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

16           **3.1**     Beginning on the Effective Date, Good Greens shall be permanently enjoined  
17 from manufacturing for sale in the State of California, “Distributing into the State of  
18 California,” or directly selling in the State of California, any Covered Products which expose a  
19 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it  
20 meets the warning requirements under Section 3.2. Notwithstanding the foregoing, so long as  
21 Good Greens can document the date of manufacture of a Covered Product, Covered Products  
22 manufactured prior to the Effective Date may be distributed or sold without a “Warning”  
23 (defined below) by any person after the Effective Date without violation of this Consent  
24 Judgment.

25                   **3.1.1**   As used in this Consent Judgment, the term “Distributing into the State  
26 of California” shall mean to directly ship a Covered Product into California for sale in  
27  
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1 California or to sell a Covered Product to a distributor that Good Greens knows will sell the  
2 Covered Product in California.

3           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
6 product (using the largest serving size recommended on the product label), multiplied by  
7 servings of the product per day (using the largest number of recommended daily servings  
8 appearing on the label for a single day of consumption), *minus* the “Naturally Occurring Lead”  
9 (defined below), which equals micrograms of lead exposure per day. If the label contains no  
10 recommended daily servings, then the number of recommended daily servings shall be one as  
11 defined by the single serving on the nutrition fact panel or supplement fact panel on the label.

12           **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,  
13 Good Greens 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) Good Greens 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  
18 of compliance that shows lead is present in the Lead Ingredient at a specific concentration or in  
19 a range; and (b) Good Greens shall obtain the documentation in Section 3.1.3(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) Good Greens 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 3.1.3(a) and (b) documents the presence of lead in any Lead  
28

1 Ingredient in **Table 1**, Good Greens shall be entitled to deduct the amount of the Naturally  
2 Occurring Lead for that Lead Ingredient, as listed in **Table 1**. If the Covered Product does not  
3 contain a Lead Ingredient listed in **Table 1**, Good Greens shall not be entitled to a deduction for  
4 the Naturally Occurring Lead in **Table 1** for that Covered Product.

5 To deduct the Naturally Occurring Lead in any Covered Product for purposes of  
6 determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this  
7 Section 3.1.3, Good Greens shall provide to ERC, within thirty (30) days after the first  
8 anniversary of the Effective Date, the documentation required under Section 3.1.3(a)-(c).  
9 Thereafter, for three (3) additional consecutive anniversaries after the Effective Date, if Good  
10 Greens deducts Naturally Occurring Lead in a Lead Ingredient in calculating the Daily Lead  
11 Exposure Level, Good Greens shall provide to ERC, within thirty (30) days after each such  
12 anniversary date, the documentation for each Lead Ingredient required under Section 3.1.3(a)-(c)  
13 for each such applicable twelve (12) month period.

14 **TABLE 1**

| <b>INGREDIENT</b>   | <b>NATURALLY OCCURRING AMOUNTS OF LEAD</b>  |
|---------------------|---|
| 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   |
| Chocolate Liquor    | 1.0 micrograms/gram   |
| Cocoa Butter        | 0.1 micrograms/gram   |

22 **3.2 Clear and Reasonable Warnings**

23 If Good Greens is required to provide a warning pursuant to Section 3.1, the following  
24 warning must be utilized (“Warning”):  
25

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

Good Greens shall use the phrase “cancer and” in the Warning if Good Greens has documented or

1 is in possession of representative test results indicating that the “Daily Lead Exposure Level” is  
2 greater than fifteen (15) micrograms of lead as determined pursuant to the quality control  
3 methodology set forth in Section 3.4.

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

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

26 Good Greens must display the above Warning with such conspicuousness, as compared  
27 with other words, statements or designs on the label or container, or on its website, if applicable, to  
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1 render the Warning likely to be read and understood by an ordinary individual under customary  
2 conditions of purchase or use of the product.

3 **3.3 Reformulated Covered Products**

4 A Reformulated Covered Product is a Covered Product for which the “Daily Lead  
5 Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by the quality  
6 control methodology described in Section 3.4 and for which the Uniform Product Code (UPC)  
7 remains the same.

8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** Beginning within one (1) year of the Effective Date, Good Greens shall  
10 arrange for lead testing of the Covered Products at least once a year for a minimum of three (3)  
11 consecutive years by arranging for testing of three (3) randomly selected samples from  
12 different lots of each of the Covered Products, in the form intended for sale to the end-user,  
13 which Good Greens intends to sell or is manufacturing for sale in California, directly selling to  
14 a consumer in California, or “Distributing into the State of California.” If three (3) or more lots  
15 of a given Covered Product are not available at the time of such sampling, then the samples  
16 shall be selected from such number of lots as are available. If tests conducted pursuant to this  
17 Section demonstrate that no Warning is required for a Covered Product during each of three (3)  
18 consecutive years, then the testing requirements of this Section will no longer be required as to  
19 that Covered Product; provided, however, that Good Greens shall not be required under this  
20 Consent Judgment to test any Covered Product for more than four (4) consecutive years from  
21 the Effective Date. Nothing in this Section 3.4.1 shall diminish Good Greens’ ongoing  
22 obligation to provide an accurate Warning when required hereunder.

23 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the  
24 average (arithmetic mean) of the lead detection results of the three (3) randomly selected  
25 samples of the Covered Products will be controlling for all purposes under this Consent  
26 Judgment.

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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 Good Greens 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 Good Greens’ 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, Good Greens shall  
14 deliver lab reports obtained pursuant to Section 3.4 to ERC. Good Greens shall retain all test  
15 results and documentation for a period of three (3) years from the date of each test. ERC shall  
16 not request such lab reports more than once annually, absent good cause to do so.

17           **3.4.7** No testing shall be required for a Covered Product which includes a  
18 Warning compliant with Section 3.2 on the label, container, or on Good Greens’ proprietary  
19 website or for a Covered Product that is no longer manufactured, a Covered Product which is  
20 not sold in California, or, with respect to internet sales by and through Good Greens’ own  
21 website, a Covered Product that is not shipped to a California shipping address, or for a  
22 Covered Product that is merely transshipped through California (i.e., remains unopened) to a  
23 retailer or distributor outside of California that does not sell that particular Covered Product to  
24 persons inside of California.

#### 25   **4. SETTLEMENT PAYMENT**

26           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
27 attorney’s fees, and costs, Good Greens shall make a total payment of \$30,000.00 (“Total  
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1 Settlement Amount”) to ERC within five (5) business days of the Effective Date (“Due Date”).  
2 Good Greens shall make this payment by wire transfer to ERC’s account, for which ERC will  
3 give Good Greens the necessary account and taxpayer payment 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** \$5,307.07 shall be considered a civil penalty pursuant to California Health and  
7 Safety Code section 25249.7(b)(1). Within fifteen (15) business days ERC shall remit 75%  
8 (\$3,980.30) 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% (\$1,326.77) of the civil penalty.

12 **4.3** \$1,435.73 shall be distributed to ERC as reimbursement to ERC for reasonable  
13 costs incurred in bringing this action.

14 **4.4** \$1,575.00 shall be distributed to Michael Freund as reimbursement of ERC’s  
15 attorney’s fees, \$5,362.50 shall be distributed to Ryan Hoffman as reimbursement of ERC’s  
16 attorney’s fees, while \$16,319.70 shall be distributed to ERC for its in-house legal fees. Except  
17 as explicitly provided herein, each Party shall bear its own fees and costs.

18 **4.5** In the event that Good Greens fails to remit the Total Settlement Amount owed  
19 under Section 4 of this Consent Judgment on or before the Due Date, Good Greens shall be  
20 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
21 provide written notice of the delinquency to Good Greens via electronic mail. If Good Greens  
22 fails to deliver the Total Settlement Amount within five (5) days from the written notice, the  
23 Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided in  
24 the California Code of Civil Procedure section 685.010. Additionally, Good Greens agrees to  
25 pay ERC’s reasonable attorney’s fees and costs for any efforts to collect the payment due under  
26 this Consent Judgment.

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1     **5.    MODIFICATION OF CONSENT JUDGMENT**

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

6           **5.2**    If any Party seeks to modify this Consent Judgment under Section 5.1, then that  
7 Party must provide written notice to the other Party of its intent (“Notice of Intent”). The  
8 Parties shall meet and confer in good faith regarding the proposed modification. Within thirty  
9 (30) days of that meeting, if there remains a dispute over the proposed modification, the Party  
10 disputing the modification shall provide the other Party a written basis for its position. The  
11 Parties shall continue to meet and confer for an additional thirty (30) days in an effort to  
12 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing  
13 to different deadlines for the meet-and-confer period.

14           **5.3**    In the event that Good Greens initiates or otherwise requests a modification  
15 under Section 5.1, and the meet and confer process leads to a joint motion or application for a  
16 modification of the Consent Judgment, Good Greens shall reimburse ERC its costs and  
17 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and  
18 arguing the motion or application. ERC shall not be reimbursed for costs or attorney’s fees for  
19 an uncontested motion, or for a ministerial motion (such as a change in name or contact  
20 information) or if ERC does not expend more than two (2) hours of attorney time on the joint  
21 motion.

22           **5.4**    Where the meet-and-confer process does not lead to an uncontested motion or to  
23 a joint motion or application in support of a modification of the Consent Judgment, then either  
24 Party may seek judicial relief on its own.

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1     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
2     **JUDGMENT**

3           **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
4 this Consent Judgment. This Consent Judgment may be enforced solely by the Parties hereto,  
5 including their respective successors or assigns, provided each Party identifies any such  
6 successor or assign in writing to the other Party.

7           **6.2**     If ERC alleges that any Covered Product failed or fails to bear a Warning with  
8 respect to lead and was manufactured for sale in the State of California, “Distributed into the  
9 State of California,” or directly sold in violation of this Consent Judgment, then ERC shall  
10 inform Good Greens in a reasonably prompt manner of its test results, including information  
11 sufficient to permit Good Greens to identify the Covered Products at issue, and of ERC’s  
12 calculation of the Daily Lead Exposure Level. Good Greens shall, within thirty (30) days  
13 following such notice, provide ERC with testing information, from an independent third-party  
14 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, and other relevant information  
15 it may wish to present to ERC, if any, demonstrating Good Greens’ compliance with the  
16 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to  
17 ERC taking any further legal action.

18     **7.     APPLICATION OF CONSENT JUDGMENT**

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

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

26           **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC,  
27 on behalf of itself and in the public interest, and Good Greens and its respective officers,  
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1 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
2 manufacturers, franchisees, licensees, customers (not including private label customers of Good  
3 Greens), distributors, wholesalers, retailers, and all other upstream and downstream entities in  
4 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of  
5 any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public  
6 interest, hereby fully releases and discharges the Released Parties from any and all claims,  
7 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
8 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
9 the Covered Products manufactured on or prior to the Effective Date, as to any alleged  
10 violation of Proposition 65 or its implementing regulations arising from the failure to provide  
11 Proposition 65 warnings on the Covered Products regarding lead up to and including the  
12 Effective Date.

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

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

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

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

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

6 **8.4** Compliance with the terms of this Consent Judgment by Good Greens shall be  
7 deemed to constitute compliance with Proposition 65 by any Released Party regarding alleged  
8 exposures to lead in the Covered Products as set forth in the Notices and Complaint after the  
9 Effective Date.

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

13 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

16 **10. GOVERNING LAW**

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

19 **11. PROVISION OF NOTICE**

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

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

24 Chris Heptinstall  
25 Executive Director, Environmental Research Center  
26 3111 Camino Del Rio North, Suite 400  
27 San Diego, CA 92108  
28 Telephone: (619) 500-3090  
Email: [chris\\_erc501c3@yahoo.com](mailto:chris_erc501c3@yahoo.com)

1 With a copy to:  
2 MICHAEL FREUND  
3 RYAN HOFFMAN  
4 MICHAEL FREUND & ASSOCIATES  
5 1919 Addison Street, Suite 105  
6 Berkeley, CA 94704  
7 Telephone: (510) 540-1992  
8 Facsimile: (510) 540-5543  
9

6 **SUNDIA CORPORATION, individually and doing business as GOOD GREENS**

7 Bradford Oberwager  
8 Sundia Corporation, individually and doing business as Good Greens  
9 340 S. Lemon Ave. #8093N  
10 Walnut, CA 91789  
11 brad@oberwager.com

11 With a copy to:  
12 JUDITH M. PRAITIS  
13 SIDLEY AUSTIN LLP  
14 555 West Fifth Street, Suite 4000  
15 Los Angeles, California 90013-1010  
16 Telephone: (213) 896-6000  
17 Facsimile: (213) 896-6600  
18 Email: jpraitis@sidley.com.

17 **12. COURT APPROVAL**

18 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
19 Motion for Court Approval. Good Greens shall not object to judicial approval of the Consent  
20 Judgment. in the form it was executed and, upon request of ERC, shall file a Statement of Non-  
21 Opposition to these Consent Judgment terms

22 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
23 the Parties shall meet and confer with the Attorney General, or with each other, as applicable,  
24 to attempt in good faith to resolve the concern in a timely manner, and if possible prior to the  
25 hearing on the motion.

26 ///

27 ///

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

4           **13. EXECUTION AND COUNTERPARTS**

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

8           **14. DRAFTING**

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

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

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

22           **16. ENFORCEMENT**

23           This Consent Judgment may be enforced exclusively by the Parties hereto. ERC may,  
24 by motion or order to show cause before the Superior Court of Alameda County, enforce the  
25 terms and conditions contained in this Consent Judgment. In any action brought by ERC to  
26 enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as  
27 are provided by law for failure to comply with the Consent Judgment.



1     **17. ENTIRE AGREEMENT, AUTHORIZATION**

2             **17.1** This Consent Judgment contains the sole and entire agreement and  
3 understanding of the Parties with respect to the entire subject matter herein, and any and all  
4 prior discussions, negotiations, commitments, and understandings related hereto. No  
5 representations, oral or otherwise, express or implied, other than those contained herein have  
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
7 herein, shall be deemed to exist or to bind any Party.

8             **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10     **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
11     **CONSENT JUDGMENT**

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

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

18             (2) Make the findings pursuant to California Health and Safety Code section  
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20     ///

21     ///

22     ///

23     ///

24     ///

25     ///

26     ///

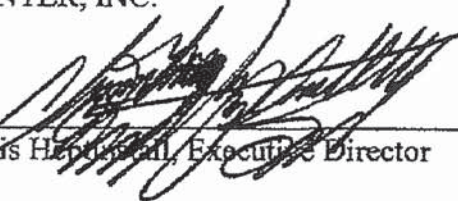
27     ///

28     ///

1 **IT IS SO STIPULATED:**

2 Dated: 6/18/, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC.

3  
4  
5 By:   
Chris Heptinstall, Executive Director

8 Dated: June 18, 2018


SUNDIA CORPORATION, individually and  
doing business as GOOD GREENS

10  
11 By: BMSOZ  
Bradford Oberwager, Founder and  
Chairman

14 **APPROVED AS TO FORM:**


16 Dated: 8/13, 2018

MICHAEL FREUND & ASSOCIATES

18  
19 By:   
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

22 Dated: June 19, 2018

SIDLEY AUSTIN LLP

23  
24 By:   
Judith M. Praitis  
Attorney for Defendant Sundia  
Corporation, individually and doing  
business as Good Greens

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  
5 IT IS SO ORDERED, ADJUDGED AND DECREED.

6  
7 Dated: \_\_\_\_\_, 2018

8 \_\_\_\_\_  
9 Judge of the Superior Court

**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.**

May 1, 2018

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

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

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

**Good Nutrition, LLC, individually and doing business as Good Greens  
Sundia Corporation, individually and doing business as Good Greens  
PurUsHealth, LLC, individually and doing business as Good Greens**

**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. Good! Greens Wildberry - Lead**
- 2. Good! Greens Chocolate Coconut - Lead**
- 3. Good! Greens Chocolate Raspberry - Lead**
- 4. Good! Greens Chocolate Peanut Butter - Lead**
- 5. Good! Greens Chocolate Mint - Lead**
- 6. Good! Greens Chocolate Chunk - 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.

**Exhibit A**

May 1, 2018

Page 2

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 1, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting 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 Violators 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 or at rrhoffma@gmail.com.**

Sincerely,



---

Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Good Nutrition, LLC, individually and doing business as Good Greens; Sundia Corporation, individually and doing business as Good Greens; PurUsHealth, LLC, individually and doing business as Good Greens and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Good Nutrition, LLC, individually and doing business as Good Greens; Sundia Corporation, individually and doing business as Good Greens; and PurUsHealth, LLC, individually and doing business as Good Greens**

I, Ryan Hoffman, declare:

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

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

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

Dated: May 1, 2018



\_\_\_\_\_  
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 May 1, 2018 between 8:00 a.m. and 5:00 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  
Good Nutrition, LLC, individually  
and doing business as Good Greens  
340 South Lemon Avenue, #8093N  
Walnut, CA 91789

Current President or CEO  
PurUsHealth, LLC, individually  
and doing business as Good Greens  
19701 Shaker Boulevard  
Shaker Heights, OH 44122

Current President or CEO  
Good Nutrition, LLC, individually  
and doing business as Good Greens  
Post Office Box 201727  
Cleveland, OH 44120

The Corporation Trust Company  
(Registered Agent for Good Nutrition, LLC,  
Individually and doing business as Good Greens)  
1209 N. Orange Street  
Wilmington, DE 19801

Current President or CEO  
Good Nutrition, LLC, individually  
and doing business as Good Greens  
1300 East 9<sup>th</sup> Street  
Cleveland, OH 44114

CT Corporation System  
(Registered Agent for Good Nutrition, LLC,  
Individually and doing business as Good Greens)  
4400 Easton Commons, Suite 125  
Columbus, OH 43219

Current President or CEO  
Sundia Corporation, individually and  
doing business as Good Greens  
340 South Lemon Avenue, #8093N  
Walnut, CA 91789

Bradford Oberwager  
(Registered Agent for Sundia Corporation,  
individually and doing business as Good Greens)  
25 Orinda Way, Suite 300A  
Orinda, CA 94563

Current President or CEO  
Sundia Corporation, individually and  
doing business as Good Greens  
25 Orinda Way, Suite 300A  
Orinda, CA 94563

PurUsHealth, LLC  
(Registered Agent for Good Greens)  
3558 Lee Road  
Shaker Heights, OH 44120

Current President or CEO  
PurUsHealth, LLC, individually  
and doing business as Good Greens  
3558 Lee Road  
Shaker Heights, OH 44120

Corporation Service Company  
(Registered Agent for Sundia Corporation,  
individually and doing business as Good Greens)  
251 Little Falls Drive  
Wilmington, DE 19808

Katen Keith Pabley  
(Registered Agent for PurUsHealth, LLC,  
Individually and doing business as Good Greens)  
3558 Lee Road  
Shaker Heights, OH 44120

On May 1, 2018 between 8:00 a.m. and 5:00 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 May 1, 2018 between 8:00 a.m. and 5:00 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)

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

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

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
[CityAttyCrimProp65@sandiego.gov](mailto:CityAttyCrimProp65@sandiego.gov)

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

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

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

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



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

May 1, 2018

Page 6

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

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 May 1, 2018 between 8:00 a.m. and 5:00 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 May 1, 2018, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

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

May 1, 2018

Page 7

Service List

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

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

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

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

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

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

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

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

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, Inyo County  
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  
303 West Third Street  
San Bernardino, CA 92415

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, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
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  
463 2<sup>nd</sup> 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 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

---

<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>.

**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 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 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

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<sup>2</sup> 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](mailto: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.

**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.

June 1, 2018

**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 product 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 this product. 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:

**Sundia Corporation, individually and doing business as Good Greens**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

**Good! Greens Apple Crumb Yogurt – 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.

**Exhibit B**



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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least June 1, 2015, as well as every day since the product was 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 product. 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 ingesting this product 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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product 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 or at [rrhoffma@gmail.com](mailto:rrhoffma@gmail.com).**

Sincerely,



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Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Sundia Corporation, individually and doing business as Good Greens, 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 Sundia Corporation, individually and doing business as Good Greens**

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 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: June 1, 2018



---

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 June 1, 2018, between 8:00 a.m. and 5:00 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  
Sundia Corporation, individually and  
doing business as Good Greens  
340 South Lemon Avenue, #8093N  
Walnut, CA 91789

Bradford Oberwager  
(Registered Agent for Sundia Corporation,  
individually and doing business as Good Greens)  
25 Orinda Way, Suite 300A  
Orinda, CA 94563

Current President or CEO  
Sundia Corporation, individually and  
doing business as Good Greens  
25 Orinda Way, Suite 300A  
Orinda, CA 94563

Corporation Service Company  
(Registered Agent for Sundia Corporation,  
individually and doing business as Good Greens)  
251 Little Falls Drive  
Wilmington, DE 19808

On June 1, 2018, between 8:00 a.m. and 5:00 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 June 1, 2018, between 8:00 a.m. and 5:00 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

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

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

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

June 1, 2018

Page 5

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

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

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

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

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

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 June 1, 2018, between 8:00 a.m. and 5:00 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 June 1, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

June 1, 2018

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Service List

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

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

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

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

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

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

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

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

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, Inyo County  
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  
303 West Third Street  
San Bernadino, CA 92415

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, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
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  
463 2<sup>nd</sup> 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 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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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>.

**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 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 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

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<sup>2</sup> 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](mailto: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.