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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **COUNTY OF ALAMEDA**

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

26 **Plaintiff,**

27 **vs.**

28 **HOTZE HEALTH AND WELLNESS**  
**CENTER INTERNATIONAL ONE, LLC,**  
**individually and dba HOTZE VITAMINS;**  
**PHYSICIAN'S PREFERENCE**  
**INTERNATIONAL, LP, individually and**  
**dba HOTZE VITAMINS; PARADIGM**  
**HOLDINGS, LLC, individually and dba**  
**HOTZE VITAMINS; BRAIDWOOD**  
**MANAGEMENT, INC., individually and**  
**dba HOTZE VITAMINS; STEVEN F.**  
**HOTZE, M.D., and DOES 1-100**

**Defendants.**

**CASE NO. RG18914802**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 30, 2018

Trial Date: June 9, 2023

1     **1. INTRODUCTION**

2           **1.1**     On July 30, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a  
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the  
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
6 captioned against Hotze Health & Wellness Center International One, L.L.C., individually and  
7 doing business as Hotze Vitamins; Physician’s Preference International, LP, individually and  
8 doing business as Hotze Vitamins; and Braidwood Management, Inc., individually and dba  
9 Hotze Vitamins. Subsequently, on December 10, 2019, a First Amendment Complaint was  
10 filed (the operative Complaint, hereinafter referred to as “Complaint”) captioned against the  
11 originally captioned defendants and Paradigm Holdings, LLC, individually and dba Hotze  
12 Vitamins and Steven F. Hotze, M.D. and Does 1-100. Thereafter, the Court dismissed all  
13 defendants except Physician’s Preference International, LP, who is the sole defendant and  
14 referred to hereinafter as “Defendant” or “PPILP.”

15           **1.2**     PPILP disputes that any of the defendants other than itself did business as Hotze  
16 Vitamins at any time relevant to this litigation, and—by order dated September 2, 2021—the  
17 Court dismissed the four non-PPILP defendants as separate entities over which the Court  
18 lacked personal jurisdiction.

19           **1.3**     In this action, ERC alleges that a number of products manufactured, distributed,  
20 or sold by PPILP in California contained lead, a chemical listed under Proposition 65 as a  
21 carcinogen and reproductive toxin, and exposed consumers to this chemical at a level requiring  
22 a Proposition 65 warning. These products (referred to hereinafter individually as a “Covered  
23 Product” or collectively as “Covered Products”) are: (1) Hotze Vitamins Pure Cleanse  
24 Functional Detoxification Powder Natural Berry Flavor; (2) Hotze Vitamins Pure Pea Protein  
25 Natural Vanilla Flavor, (3) Hotze Vitamins Pure Pea Protein Natural Chocolate Flavor, (4)  
26 Hotze Vitamins Optimal Greens Detoxification and Mental Clarity Lemon-Lime Flavor, (5)  
27 Hotze Vitamins Bodyworks Plus by Dr Hotze, (6) Hotze Vitamins Fiber Blend Plus Probiotics,  
28 (7) Hotze Vitamins Milk Thistle Extract 150 mg, (8) Hotze Vitamins Dr Hotze's Mocha

1 Protein Bar, (9) My Hotze Pak Detox Starter Pak which includes the following products: a. My  
2 Hotze Pak Detox Starter Pak Breakfast, b. My Hotze Pak Detox Starter Pak Lunch, and c. My  
3 Hotze Pak Detox Starter Pak Dinner; (10) My Hotze Pak Skinny Pak which includes the  
4 following products: a. My Hotze Pak Skinny Pak Breakfast and b. My Hotze Pak Skinny Pak  
5 Dinner; (11) Hotze Vitamins Dr. Hotze's Dark Chocolate Coconut Bar, (12) My Hotze Pak 14  
6 Day Detox Kit which includes the following products: a. My Hotze Pak 14 Day Detox Kit  
7 Bedtime, b. My Hotze Pak 14 Day Detox Kit Dinner; c. My Hotze Pak 14 Day Detox Kit  
8 Breakfast, d. My Hotze Pak 14 Day Detox Kit Upon Rising, e. Hotze Vitamins Pure Cleanse  
9 Functional Detoxification Powder Natural Berry Flavor, and f. Hotze Vitamins Pure Pea  
10 Protein Natural Vanilla Flavor; and (13) Hotze Vitamins Cranberry Concentrate.

11 **1.4** ERC and PPILP are hereinafter referred to individually as a "Party" and  
12 collectively as the "Parties."

13 **1.5** ERC is a 501 (c)(3) California non-profit corporation that contends that it is  
14 dedicated to, among other causes, helping safeguard the public from health hazards by  
15 reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment  
16 for consumers and employees, and encouraging corporate responsibility.

17 **1.6** Consistent with sworn testimony that PPILP submitted in this action, PPILP is a  
18 Texas limited partnership that contends: (a) that it never has had ten (10) or more employees,  
19 which would exempt PPILP from Proposition 65 under California Health and Safety Code  
20 section 25249.11(b); (b) that, before the commencement of this action, PPILP began applying  
21 Proposition 65-compliant stickers on all its California-bound sales of the Covered Products,  
22 (c) that on or about February 19, 2019, PPILP disabled sales to California addresses via the  
23 hotzevitamins.com website, for reasons other than Proposition 65, with no intention of selling  
24 products to California in the future; (d) that the Covered Products contained lead as a naturally  
25 occurring substance in the organic ingredients, which—if proven—would exempt the Covered  
26 Products from Proposition 65 under California Health and Safety Code section 25249.10 (c)  
27 and 27 Cal. Code Regs. section 25501; and (e) that the Covered Products complied with the  
28 applicable guidelines from the federal Food & Drug Administration for lead in food and

1 nutritional supplements. ERC disputes these contentions.

2       **1.7** For purposes of this Consent Judgment, the Parties agree that PPILP is a business  
3 entity that has sold the Covered Products via the hotzevitamins.com website from Texas to  
4 purchasers in California. PPILP represents that it never either distributed the Covered Products to  
5 California via any other channel or manufactured the Covered Products.

6       **1.8** The Complaint is based on allegations contained in ERC's Notice of Violation  
7 dated May 10, 2018, that was served on the California Attorney General, other public  
8 enforcers, and PPILP ("Notice"). A true and correct copy of the 60-Day Notice dated May 10,  
9 2018, is attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60  
10 days have passed since the Notice was served on the Attorney General, public enforcers, and  
11 PPILP, and no designated governmental entity has filed a Complaint against PPILP with regard  
12 to the Covered Products or the alleged violations.

13       **1.9** ERC's Notice and Complaint allege that use of the Covered Products by  
14 California consumers exposes them to lead without first receiving clear and reasonable  
15 warnings from PPILP, which is in violation of California Health and Safety Code section  
16 25249.6. PPILP denies all material allegations contained in the Notice and Complaint.

17       **1.10** The Parties have entered into this Consent Judgment in order to settle,  
18 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
19 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
20 or be construed as an admission by any of the Parties or by any of their respective officers,  
21 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
22 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
23 issue of law, or violation of law.

24       **1.11** Except as expressly set forth herein, nothing in this Consent Judgment shall  
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
26 any current or future legal proceeding unrelated to these proceedings.

27       **1.12** The Effective Date of this Consent Judgment is the date on which it is entered  
28 as a Judgment by this Court.



1     **2. JURISDICTION**

2             For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through  
4 and including the Effective Date that were or could have been asserted in this action based on the  
5 facts alleged in the Notice and Complaint.

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

7             **3.1**     Beginning on the Effective Date, PPILP shall be permanently enjoined from  
8 manufacturing for sale in the State of California, “Distributing into the State of California,” or  
9 directly selling in the State of California, any Covered Product that exposes a person to a  
10 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the  
11 warning requirements under Section 3.2. The injunctive relief requirements imposed in  
12 Section 3 of this Consent Judgment shall be in effect only during time periods in which PPILP  
13 employs ten or more persons and only to PPILP action or inaction over which the Court has  
14 personal jurisdiction.

15             **3.1.1**   As used in this Consent Judgment, the term “Distributing into the State  
16 of California” shall mean to directly ship a Covered Product into California for sale in  
17 California or to sell a Covered Product to a distributor that PPILP knows or has reason to know  
18 will sell the Covered Product in California.

19             **3.1.2**   For purposes of this Consent Judgment, the “Daily Lead Exposure  
20 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
21 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
22 product (using the largest serving size appearing on the product label), multiplied by servings  
23 of the product per day (using the largest number of recommended daily servings appearing on  
24 the label), which equals micrograms of lead exposure per day. If the label contains no  
25 recommended daily servings, then the number of recommended daily servings shall be one.

26             **3.2 Clear and Reasonable Warnings**

27             If PPILP is required to provide a warning pursuant to Section 3.1, the following warning  
28 must be utilized (“Warning”):

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

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

8       The Warning shall be securely affixed to or printed upon the label of each Covered  
9       Product and it must be set off from other surrounding information and enclosed in a box. In  
10      addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout  
11      page when a California delivery address is indicated for any purchase of any Covered Product. An  
12      asterisk or other identifying method must be utilized to identify which products on the checkout  
13      page are subject to the Warning. In no event shall any internet or website Warning be contained in  
14      or made through a link.

15      The Warning shall be at least the same size as the largest of any other health or safety  
16      warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
17      capital letters and in bold print. No statements intended to or likely to have the effect of  
18      diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
19      Further, no statements may accompany the Warning that state or imply that the source of the listed  
20      chemical has an impact on or results in a less harmful effect of the listed chemical.

21      PPILP must display the above Warning with such conspicuousness, as compared with  
22      other words, statements or designs on the label, or on its website, if applicable, to render the  
23      Warning likely to be read and understood by an ordinary individual under customary conditions of  
24      purchase or use of the product.

25      For purposes of this Consent Judgment, the term “label” means a display of written,  
26      printed or graphic material that is printed on or affixed to a Covered Product or its immediate  
27      container or wrapper.

28      ///

1           **3.3     Conforming Covered Products**

2           A Conforming Covered Product is either (a) a Covered Product for which the “Daily Lead  
3 Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure  
4 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
5 3.4, and that is not known by PPILP to contain other chemicals that violate Proposition 65’s safe  
6 harbor thresholds, or (b) a product sold by PPILP when PPILP had fewer than ten (10) employees.

7           **3.4     Testing and Quality Control Methodology**

8           **3.4.1** Except as provided in Sections 3.1 and 3.4.7, beginning within one year  
9 of the Effective Date, lead testing of the Covered Products at least once a year for a minimum  
10 of five consecutive years shall be arranged by PPILP or its manufacturers for the testing of  
11 three (3) randomly selected samples of each of the Covered Products, in the form intended for  
12 sale to the end-user, which PPILP intends to sell or is manufacturing for sale in California,  
13 directly selling to a consumer in California or “Distributing into the State of California.” If  
14 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered  
15 Product during each of five consecutive years, then the testing requirements of this Section will  
16 no longer be required as to that Covered Product. For purposes of this Section 3.4, testing by  
17 PPILP’s manufacturer shall be attributable to PPILP for Covered Products that PPILP does not  
18 manufacture, even if PPILP is not then distributing Covered Products to California or has  
19 fewer than ten (10) employees. For any Covered Product that PPILP itself manufactures, if  
20 during or after the five-year testing period, PPILP changes ingredient suppliers for any of the  
21 Covered Products and/or reformulates any of the Covered Products, PPILP shall test that  
22 Covered Product annually for at least four (4) consecutive years after such change is made.

23           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
24 lead detection result of the three (3) randomly selected samples of the Covered Products will  
25 be controlling.

26           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
27 laboratory method that complies with the performance and quality control factors appropriate  
28 for the method used, including limit of detection and limit of quantification, sensitivity,

1 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
2 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010  
3 mg/kg.

4 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
5 independent third party laboratory certified by the California Environmental Laboratory  
6 Accreditation Program or an independent third-party laboratory that is registered with the  
7 United States Food & Drug Administration.

8 **3.4.5** Nothing in this Consent Judgment shall limit PPILP’s ability to conduct,  
9 or require that others conduct, additional testing of the Covered Products, including the raw  
10 materials used in their manufacture.

11 **3.4.6** Within thirty (30) days of ERC’s written request, PPILP shall deliver lab  
12 reports obtained pursuant to Section 3.4 to ERC. PPILP shall retain all test results and  
13 documentation for a period of five years from the date of each test.

14 **3.4.7** The testing requirements under this Section 3.4 do not apply while  
15 PPILP is no longer selling in California or has fewer than ten (10) employees; however, in the  
16 event PPILP resumes selling the Covered Product in California and has ten (10) or more  
17 employees, PPILP shall be required to comply with the testing requirements of this section  
18 beginning within one (1) year of the date that PPILP resumes selling the Covered Product in  
19 California and has ten (10) or more employees.

20 **3.5** To the extent that Proposition 65 or the implementing regulations are amended  
21 from time to time, the revised requirements—whether more stringent, less stringent, or merely  
22 different—will apply prospectively to whatever extent those revised requirements apply to the  
23 Parties and Covered Products, notwithstanding the provisions of this Section 3.

#### 24 **4. SETTLEMENT PAYMENT**

25 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
26 payments, sanctions, attorney’s fees, and costs, PPILP shall make a total payment of  
27 \$20,360.00 (“Total Settlement Amount”) to ERC within five (5) court days of service by ERC  
28 of the executed Consent Judgment on PPILP’s counsel (“Due Date”). PPILP shall make this

1 payment (“Settlement Payment”) by wire transfer to ERC’s account, for which ERC will give  
2 PPILP’s counsel the necessary account information via electronic mail at least five (5) days  
3 prior to the Effective Date. The Total Settlement Amount shall be apportioned as follows:

4           **4.1.1** \$1,000.00 shall be considered a civil penalty pursuant to California  
5 Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$750.00) of the civil  
6 penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in  
7 the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health  
8 and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$250.00) of the civil  
9 penalty.

10           **4.1.2** \$11,560.00 allocated to the payment of three sanctions the Court  
11 assessed against PPILP in the amounts of \$3,000, \$3,560, and \$5,000, which PPILP contends  
12 are appealable with the final judgment. ERC waives any additional payment pursuant to  
13 California Code of Civil Procedure section 685.010 or otherwise, and PPILP waives its right to  
14 appeal those three sanctions, as well as PPILP’s right to appeal the Court’s orders declining to  
15 award sanctions with respect to PPILP’s prevailing on any discovery-related motions.

16           **4.1.3** \$500.00 shall be distributed to ERC as reimbursement to ERC for  
17 reasonable costs incurred in bringing this action.

18           **4.1.4** The remainder of \$7,300.00 shall be distributed as reimbursement of  
19 ERC’s attorney’s fees, which ERC and its outside counsel shall divide pursuant to the terms of  
20 their applicable agreements.

21           **4.2** Except as explicitly provided herein, each Party shall bear its own fees and  
22 costs.

23           **4.3** In the event that PPILP fails to remit the Total Settlement Amount owed under  
24 Section 4 of this Consent Judgment on or before the Due Date, PPILP shall be deemed to be in  
25 material breach of its obligations under this Consent Judgment unless ERC or ERC’s financial  
26 institution bear responsibility for PPILP’s non-payment or untimely payment of the Settlement  
27 Payment. ERC shall provide written notice of the delinquency to PPILP via electronic mail. If  
28 PPILP fails to deliver the Total Settlement Amount within five (5) court days from the written



1 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate  
2 provided in the California Code of Civil Procedure section 685.010 beginning on the day after  
3 such fifth court day after such written notice. If neither ERC nor ERC's financial institution  
4 bear any responsibility for PPILP's non-payment or untimely payment of the Settlement  
5 Payment and ERC initiates court proceedings, the Court may require PPILP to pay ERC's  
6 reasonable attorney's fees and costs for an enforcement proceeding to collect the payment due  
7 under this Consent Judgment.

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

9 **5.1** Except as provided in Section 11 with respect to notice, this Consent Judgment  
10 may be modified only as to injunctive terms (i) by written stipulation of the Parties and upon  
11 entry by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to  
12 Section 5.2 and upon entry by the Court of a modified consent judgment.

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

## 25 **6. ENFORCEMENT OF CONSENT JUDGMENT**

26 **6.1** If PPILP resumes sales of any of the Covered Products to California, and if  
27 ERC alleges that any such Covered Product fails to qualify as a Conforming Covered Product  
28 (for which ERC alleges that no Warning has been provided), then ERC shall inform PPILP in a



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

8       **6.2**     In the event that ERC commences enforcement pursuant to Section 6.1 or  
9 Section 16 with respect to any PPILP action or inaction after the Effective Date, including  
10 without limitation the sale of any product, and excluding only the Settlement Payment set out  
11 in Section 4, ERC shall commence the action by seeking leave to file a supplemental complaint  
12 pursuant to California Code of Civil Procedure section 464 setting out the allegations of  
13 PPILP's post-Effective Date actions and inaction that provide the basis for enforcement and by  
14 serving its motion on PPILP's registered agent as set forth in Section 11, with courtesy copies  
15 as set forth in Section 11. Providing courtesy copies as provided in Section 11 shall not  
16 constitute service on PPILP.

17       **6.3**     In the event that ERC commences enforcement pursuant to Sections 6.1-6.2 or  
18 pursuant to Section 16 with respect to any PPILP action or inaction after the Effective Date,  
19 including without limitation the sale of any product, and excluding only the Settlement  
20 Payment set out in Section 4, PPILP may move to quash service of any supplemental pleading  
21 or to dismiss on inconvenient-forum grounds pursuant to California Code of Civil Procedure  
22 section 418.10(a) within thirty (30) days of the service on PPILP's registered agent pursuant to  
23 Section 6.2 or at such later time as the Court may provide.

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

25       **7.1**     This Consent Judgment may apply to, be binding upon, and benefit the  
26 Parties and their respective officers, directors, shareholders, employees, agents, parent  
27 companies, subsidiaries, divisions, franchisees, licensees, customers (excluding private  
28 labelers), distributors, wholesalers, retailers, predecessors, successors, and assigns.

1           **7.2**       The provisions of Section 3 of this Consent Judgment apply only to sales  
2 and distribution of Covered Products by PPILP to California after the Effective Date. PPILP  
3 represents that sales to California of any products—Covered Products or otherwise—ceased on  
4 or about February 19, 2019, and no Party has any evidence of PPILP’s selling a Covered  
5 Product to California after February 11, 2019. PPILP further represents that PPILP has never  
6 distributed products—Covered Products or otherwise—through a third-party distributor, and  
7 no Party has any evidence of PPILP’s ever distributing a product through a third-party  
8 distributor.

9           **7.3**       This Consent Judgment shall have no application to the sale or distribution  
10 of any product—whether Covered Products or other products—that PPILP sells or distributes  
11 outside the State of California, except that this Consent Judgment shall apply to the distribution  
12 of Covered Products to the State of California pursuant to an express written or oral  
13 distribution agreement between PPILP and a third party distributor. To the extent that this  
14 Consent Judgment applies to the distribution of Covered Products to the State of California as  
15 the result of an express written or oral distribution agreement between PPILP and a third party  
16 distributor, PPILP may discharge its obligations under Section 3 of this Consent Judgment, if  
17 they exist, by providing its third-party distributor with a copy of this Consent Judgment and  
18 notifying the third-party distributor that it shall bear all obligations pursuant to Section 3 of this  
19 Consent Judgment.

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

21           **8.1**       This Consent Judgment is a full, final, and binding resolution between ERC,  
22 on behalf of itself and its officers, directors, employees, agents, parent companies, subsidiaries,  
23 divisions, franchisees, licensees, predecessors, successors, and assigns, and in the public  
24 interest, and PPILP, on behalf of itself and its officers, directors, shareholders, employees,  
25 agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers  
26 (not including private label customers of PPILP), distributors, wholesalers, retailers, and all  
27 other upstream and downstream entities in the distribution chain of any Covered Product, and  
28 the predecessors, successors, and assigns of any of them (collectively, “Released Parties”).

1 However, third-party distributors who are obligated to bear all obligations of Section 3 of the  
2 Consent Judgment pursuant to Section 7.3 and who do not provide the Warning as required by  
3 Section 3, are not released from liability for violations of Proposition 65.

4 **8.2** For purposes of this Consent Judgment the term "Claims as defined in  
5 Section 8.2" refers to any and all statutory or common law claims or causes of action and all  
6 rights to institute or participate in, directly or indirectly, any form of legal action, including  
7 without limitation, action to seek costs, expenses, attorneys' fees, damages, penalties,  
8 sanctions, losses, liabilities, and demands that were alleged or could have been alleged in the  
9 action, or arising out of the action, up to the Effective Date.

10 **8.3** ERC, acting in the public interest, releases the Released Parties from any  
11 and all claims for violations of Proposition 65 up through the Effective Date based on exposure  
12 to lead from the Covered Products as set forth in the Notice. ERC, on behalf of itself and its  
13 counsel only, hereby fully releases and discharges the Released Parties from any Claims as  
14 defined in Section 8.2 arising from the handling, use, or consumption of the Covered Products,  
15 as to any alleged violation of Proposition 65 or its implementing regulations arising from the  
16 failure to provide Proposition 65 warnings on the Covered Products regarding lead up to and  
17 including the Effective Date.

18 **8.4** ERC on behalf of itself and its counsel only, and PPILP on behalf of itself  
19 and its counsel only, further waive and release any Claims as defined in Section 8.2 they may  
20 have against each other for all actions or statements made or undertaken in the course of  
21 seeking or opposing enforcement of Proposition 65 in connection with the Notice and  
22 Complaint up through and including the Effective Date, provided, however, that nothing in  
23 Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent  
24 Judgment.

25 **8.5** It is possible that other claims not known to the Parties, arising out of the facts  
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
27 discovered. ERC on behalf of itself and its counsel only, and PPILP on behalf of itself and its  
28 counsel only, acknowledge that this Consent Judgment is expressly intended to cover and

1 include all such Claims up through and including the Effective Date. ERC and PPILP  
2 acknowledge that the claims released in Sections 8.3 and 8.4 above may include unknown  
3 Claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
4 Claims. California Civil Code section 1542 reads as follows:

5       A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
6       CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
7       EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
8       AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
9       AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
10       PARTY.

11 ERC on behalf of itself and its counsel only, and PPILP on behalf of itself and its counsel only,  
12 acknowledge and understand the significance and consequences of this specific waiver of  
13 California Civil Code section 1542.

14       **8.6** Compliance with the terms of this Consent Judgment shall be deemed to  
15 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
16 exposure(s) to lead in the Covered Products as set forth in the Notice and Complaint.

17       **8.7** Nothing in this Consent Judgment is intended to apply to any occupational or  
18 environmental exposures arising under Proposition 65, nor shall it apply to any of PPILP's  
19 products other than the Covered Products.

20       **8.8** Notwithstanding any other provision in this Section 8, nothing in this Consent  
21 Judgment shall release any Claims arising out of the removal of this action to the U.S. District  
22 Court for the Northern District of California on or about January 16, 2020, including, without  
23 limitation, the removal itself, (Case No. 20-cv-00370 VC) the related appeal, the "Order  
24 Remanding Case, Awarding Costs and Fees" issued on May 20, 2020, subsequent collection  
25 efforts, the ability to seek any interest, penalties, fines, or additional fees or costs that are or  
26 may be related to those proceedings, and the ability to cross-move for sanctions, fees, and costs  
27 if an effort to seek any such interest, penalties, fines, or additional fees or costs is frivolous.

## 28       **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1 affected.

2 **10. GOVERNING LAW**

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

5 **11. PROVISION OF NOTICE**

6 All notices required to be given to either Party to this Consent Judgment by the other Party  
7 shall be in writing and sent to the Party's or Parties' registered agent via the method of service on  
8 a registered agent for initiating legal action where the Party or Parties to be notified reside(s) at the  
9 time of the notice, with courtesy copies sent to the employees and agents listed below—or to such  
10 other agents as the Parties may, from time to time, advise the Court as set forth in this Section—  
11 via U.S. Priority Mail or via electronic mail where required. In the event that the identity or  
12 address of the recipient of notice for either Party changes, the Party may file a Notice of Change  
13 of Address with the Court to ensure proper future notice.

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

15 Chris Heptinstall, Executive Director  
16 Environmental Research Center, Inc.  
17 3111 Camino Del Rio North, Suite 400  
18 San Diego, CA 92108  
19 Ph: (619) 500-3090  
20 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

21 **COPY TO:**

22 Michael Freund  
23 Michael Freund & Associates  
24 1919 Addison Street, Suite 105  
25 Berkeley, CA 94704  
26 Ph: (510) 540-1992  
27 Email: [freund1@aol.com](mailto:freund1@aol.com)

28 ///

///

///

///

1 **FOR PHYSICIAN'S PREFERENCE INTERNATIONAL, LP:**

2 James Bittick, Business Director  
3 Physician's Preference International, LP  
4 20214 Braidwood Drive Ste 160  
5 Katy, TX. 77450  
6 Ph: 281-698-8627  
7 Email: [james.bittick@hotmail.com](mailto:james.bittick@hotmail.com)

8 **COPY TO:**

9 Lawrence J. Joseph  
10 Law Office of Lawrence J. Joseph  
11 1250 Connecticut Ave, NW, Suite 700-1A  
12 Washington, DC 20036  
13 Ph: 202-355-2254  
14 Email: [ljoseph@larryjoseph.com](mailto:ljoseph@larryjoseph.com)

Laurie L. York admitted *pro hac vice*  
Law Office of Laurie L. York  
6633 Oasis Dr.  
Austin, TX 78749  
Tel: 512-301-3777  
Email: [lauriey23@yahoo.com](mailto:lauriey23@yahoo.com)

15 **12. COURT APPROVAL**

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

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

22 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
23 void and have no force or effect.

24 **13. EXECUTION AND COUNTERPARTS**

25 This Consent Judgment may be executed in counterparts, which taken together shall be  
26 deemed to constitute one document. A facsimile or scanned copy of an original signature page  
27 shall be construed to be as valid as one with an original signature.

28 **14. DRAFTING**

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



1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
4 equally in the preparation and drafting of this Consent Judgment.

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

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

10 **16. ENFORCEMENT OF SECTION 4**

11 With respect to enforcing the payment provisions of Section 4 of this Consent  
12 Judgment, either Party may, by motion or order to show cause before the Superior Court of  
13 Alameda County, enforce the terms and conditions contained in this Consent Judgment.

14 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

21 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
22 authorized by the Party he or she represents to stipulate to this Consent Judgment.

23 **18. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY**

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

27 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
28 equitable settlement of all matters raised by the allegations of the Complaint that the matter has

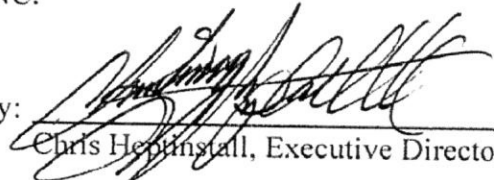
1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section  
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

5 Dated: 4/4/, 2023

ENVIRONMENTAL RESEARCH CENTER,  
INC.

By:   
Chris Heptinstall, Executive Director

6  
7  
8  
9  
10 Dated: \_\_\_\_\_, 2023

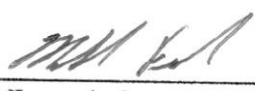
PHYSICIAN'S PREFERENCE  
INTERNATIONAL, LP

By: \_\_\_\_\_  
James Bittick, Business Director

11  
12  
13  
14 **APPROVED AS TO FORM:**

15 Dated: 4/4/, 2023

MICHAEL FREUND & ASSOCIATES

By:   
Michael Freund, Counsel for Plaintiff

16  
17  
18  
19 Dated: \_\_\_\_\_, 2023

LAW OFFICE OF LAWRENCE J. JOSEPH

By: \_\_\_\_\_  
Lawrence J. Joseph, Counsel for Defendant

20  
21  
22 Dated: \_\_\_\_\_, 2023

LAW OFFICE OF LAURIE L. YORK

By: \_\_\_\_\_  
Laurie L. York, Counsel for Defendant

1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section  
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

5 Dated: \_\_\_\_\_, 2023

ENVIRONMENTAL RESEARCH CENTER,  
INC.

6  
7  
8 By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

9  
10 Dated: 4/4, 2023

PHYSICIANS PREFERENCE  
INTERNATIONAL, LP

11  
12 By: \_\_\_\_\_  
James Bittick, Business Director

13  
14 **APPROVED AS TO FORM:**

15 Dated: \_\_\_\_\_, 2023

MICHAEL FREUND & ASSOCIATES

16  
17 By: \_\_\_\_\_  
Michael Freund, Counsel for Plaintiff

18 Dated: April 4, 2023

LAW OFFICE OF LAWRENCE J. JOSEPH

19  
20 By: \_\_\_\_\_  
Lawrence J. Joseph, Counsel for Defendant

21  
22 Dated: April 4, 2023

LAW OFFICE OF LAURIE L. YORK

23  
24 By: \_\_\_\_\_  
Laurie L. York, Counsel for Defendant

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2023

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

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**EXHIBIT A**

**Michael Freund & Associates**

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

Michael Freund, Esq.

Ryan Hoffman, Esq.

May 10, 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:

**Hotze Health & Wellness Center International One, L.L.C., individually and doing business as Hotze Vitamins**  
**Physician's Preference International, LP, individually and doing business as Hotze Vitamins**  
**Braidwood Management, Inc., individually and doing business as Hotze Vitamins**

**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. Hotze Vitamins Pure Cleanse Functional Detoxification Powder Natural Berry Flavor - Lead
2. Hotze Vitamins Pure Pea Protein Natural Vanilla Flavor - Lead
3. Hotze Vitamins Pure Pea Protein Natural Chocolate Flavor - Lead
4. Hotze Vitamins Optimal Greens Detoxification and Mental Clarity Lemon-Lime Flavor - Lead
5. Hotze Vitamins Bodyworks Plus by Dr Hotze - Lead
6. Hotze Vitamins Fiber Blend Plus Probiotics - Lead
7. Hotze Vitamins Milk Thistle Extract 150 mg - Lead
8. Hotze Vitamins Dr Hotze's Mocha Protein Bar - Lead
9. My Hotze Pak Detox Starter Pak - Lead
  - a. My Hotze Pak Detox Starter Pak Breakfast
  - b. My Hotze Pak Detox Starter Pak Lunch
  - c. My Hotze Pak Detox Starter Pak Dinner



**10. My Hotze Pak Skinny Pak - Lead**

- a. **My Hotze Pak Skinny Pak Breakfast**
- b. **My Hotze Pak Skinny Pak Dinner**

**11. Hotze Vitamins Dr. Hotze's Dark Chocolate Coconut Bar - Lead**

**12. My Hotze Pak 14 Day Detox Kit - Lead**

- a. **My Hotze Pak 14 Day Detox Kit Bedtime**
- b. **My Hotze Pak 14 Day Detox Kit Dinner**
- c. **My Hotze Pak 14 Day Detox Kit Breakfast**
- d. **My Hotze Pak 14 Day Detox Kit Upon Rising**
- e. **Hotze Vitamins Pure Cleanse Functional Detoxification Powder Natural Berry Flavor**
- f. **Hotze Vitamins Pure Pea Protein Natural Vanilla Flavor**

**13. Hotze Vitamins Cranberry Concentrate - Lead**

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

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 10, 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.

May 10, 2018

Page 3

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

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Hotze Health & Wellness Center International One, L.L.C., individually and doing business as Hotze Vitamins; Physician's Preference International, LP, individually and doing business as Hotze Vitamins; Braidwood Management, Inc., individually and doing business as Hotze Vitamins 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 Hotze Health & Wellness Center International One, L.L.C., individually and doing business as Hotze Vitamins; Physician's Preference International, LP, individually and doing business as Hotze Vitamins; and Braidwood Management, Inc., individually and doing business as Hotze Vitamins**

I, Michael Freund, declare:

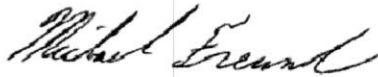
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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 10, 2018

---

Michael Freund

**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 10, 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  
Hotze Health & Wellness Center  
International One, L.L.C., individually and  
doing business as Hotze Vitamins  
20214 Braidwood Drive, Suite 215  
Katy, TX 77450

Current President or CEO  
Hotze Health & Wellness Center  
International One, L.L.C., individually and  
doing business as Hotze Vitamins  
20214 Braidwood Drive, Suite 160  
Katy, TX 77450

Current President or CEO  
Physician's Preference International, LP,  
individually and doing business as Hotze Vitamins  
20214 Braidwood Drive, Suite 215  
Katy, TX 77450

Current President or CEO  
Physician's Preference International, LP,  
individually and doing business as Hotze Vitamins  
20214 Braidwood Drive, Suite 160  
Katy, TX 77450

Current President or CEO  
Braidwood Management, Inc., individually  
and doing business as Hotze Vitamins  
20214 Braidwood Drive, Suite 215  
Katy, TX 77450

Current President or CEO  
Braidwood Management, Inc., individually  
and doing business as Hotze Vitamins  
20214 Braidwood Drive, Suite 160  
Katy, TX 77450

Steven F. Hotze  
(Registered Agent for Hotze Health & Wellness Center  
International One, L.L.C., individually and  
doing business as Hotze Vitamins)  
20214 Braidwood Drive, Suite 215  
Katy, TX 77450

Steven F. Hotze  
(Registered Agent for Braidwood Management, Inc.,  
individually and doing business as Hotze Vitamins)  
20214 Braidwood Drive, Suite 215  
Katy, TX 77450

Steven F. Hotze, M.D.  
(Registered Agent for Physician's Preference  
International, LP, individually and doing business  
as Hotze Vitamins)  
20214 Braidwood Drive, Suite 215  
Katy, TX 77450

May 10, 2018

Page 6

On May 10, 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 10, 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)

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

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

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

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

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

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

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

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

May 10, 2018

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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

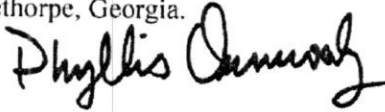
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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 10, 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 10, 2018, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody



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

May 10, 2018

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301			

## 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?*

**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

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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>.

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 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.

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

## *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.