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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.

14 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
15 of California” shall mean to directly ship a Covered Product into California for sale in
16 California or to sell a Covered Product to a distributor that PPILP knows or has reason to know
17 will sell the Covered Product in California.

18 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
19 Level” shall be measured in micrograms, and shall be calculated using the following formula:
20 micrograms of lead per gram of product, multiplied by grams of product per serving of the
21 product (using the largest serving size appearing on the product label), multiplied by servings
22 of the product per day (using the largest number of recommended daily servings appearing on
23 the label), which equals micrograms of lead exposure per day. If the label contains no
24 recommended daily servings, then the number of recommended daily servings shall be one.

25 **3.2 Clear and Reasonable Warnings**

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

28 **WARNING:** Consuming this product can expose you to chemicals including [lead] which
is [are] known to the State of California to cause [cancer and] birth defects or other

1 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

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

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

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

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

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

26 **3.3 Conforming Covered Products**

27 A Conforming Covered Product is either (a) a Covered Product for which the “Daily Lead
28 Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure

1 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
2 3.4, and that is not known by PPILP to contain other chemicals that violate Proposition 65’s safe
3 harbor thresholds, or (b) a product sold by PPILP when PPILP had fewer than ten (10) employees.

4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Except as provided in Sections 3.1 and 3.4.7, beginning within one year
6 of the Effective Date, lead testing of the Covered Products at least once a year for a minimum
7 of five consecutive years shall be arranged by PPILP or its manufacturers for the testing of
8 three (3) randomly selected samples of each of the Covered Products, in the form intended for
9 sale to the end-user, which PPILP intends to sell or is manufacturing for sale in California,
10 directly selling to a consumer in California or “Distributing into the State of California.” If
11 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered
12 Product during each of five consecutive years, then the testing requirements of this Section will
13 no longer be required as to that Covered Product. For purposes of this Section 3.4, testing by
14 PPILP’s manufacturer shall be attributable to PPILP for Covered Products that PPILP does not
15 manufacture, even if PPILP is not then distributing Covered Products to California or has
16 fewer than ten (10) employees. For any Covered Product that PPILP itself manufactures, if
17 during or after the five-year testing period, PPILP changes ingredient suppliers for any of the
18 Covered Products and/or reformulates any of the Covered Products, PPILP shall test that
19 Covered Product annually for at least four (4) consecutive years after such change is made.

20 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
21 lead detection result of the three (3) randomly selected samples of the Covered Products will
22 be controlling.

23 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
24 laboratory method that complies with the performance and quality control factors appropriate
25 for the method used, including limit of detection and limit of quantification, sensitivity,
26 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
27 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010
28 mg/kg.

1 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
2 independent third party laboratory certified by the California Environmental Laboratory
3 Accreditation Program or an independent third-party laboratory that is registered with the
4 United States Food & Drug Administration.

5 **3.4.5** Nothing in this Consent Judgment shall limit PPILP’s ability to conduct,
6 or require that others conduct, additional testing of the Covered Products, including the raw
7 materials used in their manufacture.

8 **3.4.6** Within thirty (30) days of ERC’s written request, PPILP shall deliver lab
9 reports obtained pursuant to Section 3.4 to ERC. PPILP shall retain all test results and
10 documentation for a period of five years from the date of each test.

11 **3.4.7** The testing requirements under this Section 3.4 do not apply while
12 PPILP is no longer selling in California or has fewer than ten (10) employees; however, in the
13 event PPILP resumes selling the Covered Product in California and has ten (10) or more
14 employees, PPILP shall be required to comply with the testing requirements of this section
15 beginning within one (1) year of the date that PPILP resumes selling the Covered Product in
16 California and has ten (10) or more employees.

17 **3.5** To the extent that Proposition 65 or the implementing regulations are amended
18 from time to time, the revised requirements—whether more stringent, less stringent, or merely
19 different—will apply prospectively to whatever extent those revised requirements apply to the
20 Parties and Covered Products, notwithstanding the provisions of this Section 3.

21 **4. SETTLEMENT PAYMENT**

22 **4.1** In full satisfaction of all potential civil penalties, additional settlement
23 payments, sanctions, attorney’s fees, and costs, PPILP shall make a total payment of
24 \$20,360.00 (“Total Settlement Amount”) to ERC within five (5) court days of service by ERC
25 of the executed Consent Judgment on PPILP’s counsel (“Due Date”). PPILP shall make this
26 payment (“Settlement Payment”) by wire transfer to ERC’s account, for which ERC will give
27 PPILP’s counsel the necessary account information via electronic mail at least five (5) days
28 prior to the Effective Date. The Total Settlement Amount shall be apportioned as follows:

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

7 **4.1.2** \$11,560.00 allocated to the payment of three sanctions the Court
8 assessed against PPILP in the amounts of \$3,000, \$3,560, and \$5,000, which PPILP contends
9 are appealable with the final judgment. ERC waives any additional payment pursuant to
10 California Code of Civil Procedure section 685.010 or otherwise, and PPILP waives its right to
11 appeal those three sanctions, as well as PPILP’s right to appeal the Court’s orders declining to
12 award sanctions with respect to PPILP’s prevailing on any discovery-related motions.

13 **4.1.3** \$500.00 shall be distributed to ERC as reimbursement to ERC for
14 reasonable costs incurred in bringing this action.

15 **4.1.4** The remainder of \$7,300.00 shall be distributed as reimbursement of
16 ERC’s attorney’s fees, which ERC and its outside counsel shall divide pursuant to the terms of
17 their applicable agreements.

18 **4.2** Except as explicitly provided herein, each Party shall bear its own fees and
19 costs.

20 **4.3** In the event that PPILP fails to remit the Total Settlement Amount owed under
21 Section 4 of this Consent Judgment on or before the Due Date, PPILP shall be deemed to be in
22 material breach of its obligations under this Consent Judgment unless ERC or ERC’s financial
23 institution bear responsibility for PPILP’s non-payment or untimely payment of the Settlement
24 Payment. ERC shall provide written notice of the delinquency to PPILP via electronic mail. If
25 PPILP fails to deliver the Total Settlement Amount within five (5) court days from the written
26 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
27 provided in the California Code of Civil Procedure section 685.010 beginning on the day after
28 such fifth court day after such written notice. If neither ERC nor ERC’s financial institution

1 bear any responsibility for PPILP's non-payment or untimely payment of the Settlement
2 Payment and ERC initiates court proceedings, the Court may require PPILP to pay ERC's
3 reasonable attorney's fees and costs for an enforcement proceeding to collect the payment due
4 under this Consent Judgment.

5 **5. MODIFICATION OF CONSENT JUDGMENT**

6 **5.1** Except as provided in Section 11 with respect to notice, this Consent Judgment
7 may be modified only as to injunctive terms (i) by written stipulation of the Parties and upon
8 entry by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to
9 Section 5.2 and upon entry by the Court of a modified consent judgment.

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

22 **6. ENFORCEMENT OF CONSENT JUDGMENT**

23 **6.1** If PPILP resumes sales of any of the Covered Products to California, and if
24 ERC alleges that any such Covered Product fails to qualify as a Conforming Covered Product
25 (for which ERC alleges that no Warning has been provided), then ERC shall inform PPILP in a
26 reasonably prompt manner of its test results, including information sufficient to permit PPILP
27 to identify the Covered Products at issue. PPILP shall, within thirty (30) days following such
28 notice, demonstrate PPILP's compliance with the Consent Judgment by providing ERC with

1 either (a) testing information, from an independent third-party laboratory meeting the
2 requirements of Sections 3.4.3 and 3.4.4, or (b) other information demonstrating PPILP's
3 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter
4 prior to ERC taking any further legal action.

5 **6.2** In the event that ERC commences enforcement pursuant to Section 6.1 or
6 Section 16 with respect to any PPILP action or inaction after the Effective Date, including
7 without limitation the sale of any product, and excluding only the Settlement Payment set out
8 in Section 4, ERC shall commence the action by seeking leave to file a supplemental complaint
9 pursuant to California Code of Civil Procedure section 464 setting out the allegations of
10 PPILP's post-Effective Date actions and inaction that provide the basis for enforcement and by
11 serving its motion on PPILP's registered agent as set forth in Section 11, with courtesy copies
12 as set forth in Section 11. Providing courtesy copies as provided in Section 11 shall not
13 constitute service on PPILP.

14 **6.3** In the event that ERC commences enforcement pursuant to Sections 6.1-6.2 or
15 pursuant to Section 16 with respect to any PPILP action or inaction after the Effective Date,
16 including without limitation the sale of any product, and excluding only the Settlement
17 Payment set out in Section 4, PPILP may move to quash service of any supplemental pleading
18 or to dismiss on inconvenient-forum grounds pursuant to California Code of Civil Procedure
19 section 418.10(a) within thirty (30) days of the service on PPILP's registered agent pursuant to
20 Section 6.2 or at such later time as the Court may provide. PPILP does not waive any
21 applicable defenses for any future enforcement action, including defenses relating to the
22 Court's personal jurisdiction over PPILP.

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 **7.1** This Consent Judgment may apply to, be binding upon, and benefit the
25 Parties and their respective officers, directors, shareholders, employees, agents, parent
26 companies, subsidiaries, divisions, franchisees, licensees, customers (excluding private
27 labelers), distributors, wholesalers, retailers, predecessors, successors, and assigns.

28 **7.2** The provisions of Section 3 of this Consent Judgment apply only to sales

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

8 **7.3** This Consent Judgment shall have no application to the sale or distribution
9 of any product—whether Covered Products or other products—that PPILP sells or distributes
10 outside the State of California, except that this Consent Judgment shall apply to the distribution
11 of Covered Products to the State of California pursuant to an express written or oral
12 distribution agreement between PPILP and a third party distributor or where PPILP knows or
13 has reason to know that the third party distributor is distributing Covered Products into the
14 State of California as set forth in Section 3.1.1.

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

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
17 on behalf of itself and its officers, directors, employees, agents, parent companies, subsidiaries,
18 divisions, franchisees, licensees, predecessors, successors, and assigns, and in the public
19 interest, and PPILP, on behalf of itself and its officers, directors, shareholders, employees,
20 agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers
21 (not including private label customers of PPILP), distributors, wholesalers, retailers, and all
22 other upstream and downstream entities in the distribution chain of any Covered Product, and
23 the predecessors, successors, and assigns of any of them (collectively, “Released Parties”).
24 However, third-party distributors who are obligated to bear all obligations of Section 3 of the
25 Consent Judgment pursuant to Section 7.3 and who do not provide the Warning as required by
26 Section 3, are not released from liability for violations of Proposition 65.

27 **8.2** For purposes of this Consent Judgment the term "Claims as defined in
28 Section 8.2” refers to any and all statutory or common law claims or causes of action and all

1 rights to institute or participate in, directly or indirectly, any form of legal action, including
2 without limitation, action to seek costs, expenses, attorneys' fees, damages, penalties,
3 sanctions, losses, liabilities, and demands that were alleged or could have been alleged in the
4 action, or arising out of the action, up to the Effective Date.

5 **8.3** ERC, acting in the public interest, releases the Released Parties from any
6 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
7 to lead from the Covered Products as set forth in the Notice. ERC, on behalf of itself and its
8 counsel only, hereby fully releases and discharges the Released Parties from any Claims as
9 defined in Section 8.2 arising from the handling, use, or consumption of the Covered Products,
10 as to any alleged violation of Proposition 65 or its implementing regulations arising from the
11 failure to provide Proposition 65 warnings on the Covered Products regarding lead up to and
12 including the Effective Date.

13 **8.4** ERC on behalf of itself and its counsel only, and PPILP on behalf of itself
14 and its counsel only, further waive and release any Claims as defined in Section 8.2 they may
15 have against each other for all actions or statements made or undertaken in the course of
16 seeking or opposing enforcement of Proposition 65 in connection with the Notice and
17 Complaint up through and including the Effective Date, provided, however, that nothing in
18 Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent
19 Judgment.

20 **8.5** It is possible that other claims not known to the Parties, arising out of the facts
21 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
22 discovered. ERC on behalf of itself and its counsel only, and PPILP on behalf of itself and its
23 counsel only, acknowledge that this Consent Judgment is expressly intended to cover and
24 include all such Claims up through and including the Effective Date. ERC and PPILP
25 acknowledge that the claims released in Sections 8.3 and 8.4 above may include unknown
26 Claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
27 Claims. California Civil Code section 1542 reads as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
2 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
3 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

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

7 **8.6** Compliance with the terms of this Consent Judgment shall be deemed to
8 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
9 exposure(s) to lead in the Covered Products as set forth in the Notice and Complaint.

10 **8.7** 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 PPILP's
12 products other than the Covered Products.

13 **8.8** Notwithstanding any other provision in this Section 8, nothing in this Consent
14 Judgment shall release any Claims arising out of the removal of this action to the U.S. District
15 Court for the Northern District of California on or about January 16, 2020, including, without
16 limitation, the removal itself, (Case No. 20-cv-00370 VC) the related appeal, the "Order
17 Remanding Case, Awarding Costs and Fees" issued on May 20, 2020, subsequent collection
18 efforts, the ability to seek any interest, penalties, fines, or additional fees or costs that are or
19 may be related to those proceedings, and the ability to cross-move for sanctions, fees, and costs
20 if an effort to seek any such interest, penalties, fines, or additional fees or costs is frivolous.

21 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

25 **10. GOVERNING LAW**

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

28 ///

1 **11. PROVISION OF NOTICE**

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

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

11 Chris Heptinstall, Executive Director
12 Environmental Research Center, Inc.
13 3111 Camino Del Rio North, Suite 400
14 San Diego, CA 92108
15 Ph: (619) 500-3090
16 Email: chris.heptinstall@erc501c3.org

15 **COPY TO:**

16 Michael Freund
17 Michael Freund & Associates
18 1919 Addison Street, Suite 105
19 Berkeley, CA 94704
20 Ph: (510) 540-1992
21 Email: freund1@aol.com

20 **FOR PHYSICIAN’S PREFERENCE INTERNATIONAL, LP:**

21 James Bittick, Business Director
22 Physician’s Preference International, LP
23 20214 Braidwood Drive Ste 160
24 Katy, TX. 77450
25 Ph: 281-698-8627
26 Email: james.bittick@hotzevitamins.com

24 **COPY TO:**

25 Lawrence J. Joseph
26 Law Office of Lawrence J. Joseph
27 1250 Connecticut Ave, NW, Suite 700-1A
28 Washington, DC 20036
29 Ph: 202-355-2254
30 Email: 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

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

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1 **16. ENFORCEMENT OF SECTION 4**

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

5 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

12 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

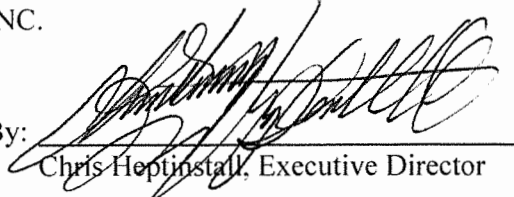
18 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
19 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
20 been diligently prosecuted, and that the public interest is served by such settlement; and

21 (2) Make the findings pursuant to California Health and Safety Code section
22 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

23 **IT IS SO STIPULATED:**

24 Dated: 4/14, 2023

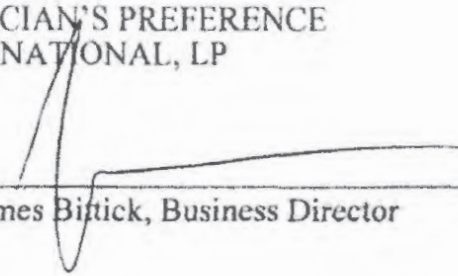
ENVIRONMENTAL RESEARCH CENTER,
INC.

25
26
27 By: 
Chris Heptinstall, Executive Director

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1 Dated: 4/11, 2023

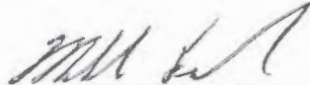
PHYSICIAN'S PREFERENCE
INTERNATIONAL, LP

By: 
James Birtick, Business Director

5 **APPROVED AS TO FORM:**

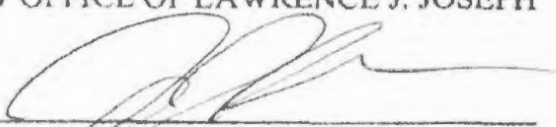
6 Dated: 4/11/, 2023

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund, Counsel for Plaintiff

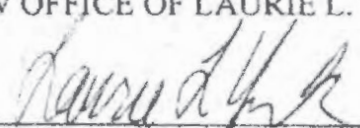
9 Dated: April 11, 2023

LAW OFFICE OF LAWRENCE J. JOSEPH

By: 
Lawrence J. Joseph, Counsel for Defendant

13 Dated: April 11, 2023

LAW OFFICE OF LAURIE L. YORK

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.

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

May 10, 2018

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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,

A handwritten signature in cursive script that reads "Michael Freund".

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
Braidwood Management, Inc., individually
and doing business as Hotze Vitamins
20214 Braidwood Drive, Suite 160
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

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

Current President or CEO
Physician’s Preference International, LP,
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

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

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

May 10, 2018

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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

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

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

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

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

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

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

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

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

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

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

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

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
May 10, 2018
Page 7

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

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

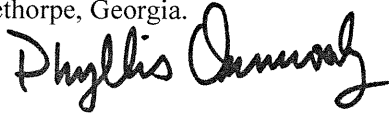
Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

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

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

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

Page 8

Service List

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

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

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

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

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

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

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

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

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

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

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa
County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada
County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange
County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
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, 2nd
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 2nd 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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

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

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

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

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

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

² See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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