

1 Michael Freund SBN 99687  
Michael Freund & Associates  
2 1919 Addison Street, Suite 105  
3 Berkeley, CA 94704  
Ph: (510) 540-1992  
4 Email: freund1@aol.com  
5 Attorney for Plaintiff Environmental Research Center, Inc.

6 David H. Kwasniewski SBN 281985  
BraunHagey & Borden LLP  
7 351 California St, 10<sup>th</sup> Fl  
8 San Francisco, CA 94104  
Ph: (415) 599-0210  
9 Email: kwasniewski@braunhagey.com  
10 Attorney for Defendants

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ALAMEDA**

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

16 **Plaintiff,**

17 **vs.**

18 **HALEN BRANDS, INC., individually and**  
19 **dba OWYN; ONLY WHAT YOU NEED,**  
20 **INC., individually and dba OWYN; and**  
**DOES 1-100**

21 **Defendants.**

**CASE NO. RG20067274**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 9, 2020

Trial Date: None set

23 **1. INTRODUCTION**

24 **1.1** On July 9, 2020, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-  
25 profit corporation, as a private enforcer and in the public interest, initiated this action by filing  
26 a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
27 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
28 (“Proposition 65”), against Halen Brands, Inc., individually and dba OWYN and Only What

1 You Need, Inc., individually and dba OWYN (collectively “Defendants”) and Does 1-100. In  
2 this action, ERC alleges that a number of products manufactured, distributed, or sold by  
3 Defendants contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens  
4 and reproductive toxins, and expose consumers to these chemicals at a level requiring a  
5 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered  
6 Product” or collectively as “Covered Products”) are: (1) OWYN Only What You Need  
7 Chocolate Chip Cookie Dough 100% Plant-Based Bar (lead), (2) OWYN Only What You  
8 Need Chocolate Chip, Cranberry 100% Plant-Based Bar (lead), (3) OWYN Only What You  
9 Need Plant-Based Drink Strawberry Banana (lead), (4) OWYN Only What You Need 100%  
10 Plant Protein Powder Dark Chocolate (lead, cadmium), (5) OWYN Only What You Need  
11 Plant-Based Drink Dark Chocolate (lead), (6) OWYN Only What You Need Plant-Based  
12 Drink Cold Brew Coffee (lead), (7) OWYN Only What You Need Plant-Based Drink Smooth  
13 Vanilla (lead), (8) OWYN Only What You Need 100% Plant Protein Powder Smooth Vanilla  
14 (lead), (9) OWYN Only What You Need Ginger, Turmeric 100% Plant-Based Bar (lead), (10)  
15 Owyn Only What You Need Plant Based Drink Cookies n' Cream (lead), (11) Owyn Meal  
16 Replacement Shake Chocolate (lead), and (12) Owyn Only What You Need Plant-Based Drink  
17 Turmeric Golden Mylk (lead).

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

20 **1.3** Defendants assert that, under the Only What You Need (“OWYN”) brand, they  
21 sell a variety of delicious and allergen-free protein drinks and powders. Defendants further  
22 assert that they previously sold a line of protein bars, including the protein bar Covered  
23 Products, that was discontinued in 2020. Defendants contend that all of their products comply  
24 with all state and federal laws and regulations, including Proposition 65.

25 **1.4** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
26 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
27 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
28 and encouraging corporate responsibility.

1           **1.5** For purposes of this Consent Judgment, the Parties agree that Halen Brands, Inc.  
2 and Only What You Need, Inc. are business entities, each of which has employed ten or more  
3 persons at all times relevant to this action, and each of which qualifies as a “person in the course  
4 of doing business” within the meaning of Proposition 65. Defendants manufacture, distribute,  
5 and/or sell the Covered Products.

6           **1.6** The Complaint is based on allegations contained in ERC’s Notices of Violation  
7 dated January 8, 2020 and March 19, 2020 that were served on the California Attorney General,  
8 other public enforcers, and Defendants (“Notices”). True and correct copies of the 60-Day  
9 Notices dated January 8, 2020 and March 19, 2020 are attached hereto as **Exhibits A** and **B** and  
10 each is incorporated herein by reference. More than 60 days have passed since the Notices were  
11 served on the Attorney General, public enforcers, and Defendants and no designated  
12 governmental entity has filed a Complaint against Defendants with regard to the Covered  
13 Products or the alleged violations.

14           **1.7** ERC’s Notices and Complaint allege that use of the Covered Products exposes  
15 persons in California to lead and/or cadmium without first providing clear and reasonable  
16 warnings in violation of California Health and Safety Code section 25249.6. Defendants deny  
17 all material allegations contained in the Notices and Complaint.

18           **1.8** The Parties have entered into this Consent Judgment in order to settle,  
19 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
20 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
21 or be construed as an admission by any of the Parties or by any of their respective officers,  
22 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
23 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
24 issue of law, or violation of law.

25           **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall  
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
27 any current or future legal proceeding unrelated to these proceedings.

28           **1.10** The Effective Date of this Consent Judgment is the date on which it is entered

1 as a Judgment by this Court.

2 **2. JURISDICTION AND VENUE**

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

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

11 **3.1** Beginning on the Effective Date, Defendants shall be permanently enjoined  
12 from manufacturing for sale in the State of California, "Distributing into the State of  
13 California," or directly selling in the State of California, any Covered Products which expose a  
14 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or  
15 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless  
16 they meet the warning requirements under Section 3.2.

17 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
18 of California" shall mean to directly ship a Covered Product into California for sale in  
19 California or to sell a Covered Product to a distributor that Defendants know or have reason to  
20 know will sell the Covered Product in California.

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

28 **3.1.3** For purposes of this Consent Judgment, the "Daily Cadmium Exposure

1 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
2 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
3 the product (using the largest serving size appearing on the product label), multiplied by  
4 servings of the product per day (using the largest number of recommended daily servings  
5 appearing on the label), which equals micrograms of cadmium exposure per day. If the label  
6 contains no recommended daily servings, then the number of recommended daily servings  
7 shall be one.

8 **3.1.4.** In calculating the Daily Lead Exposure Level for a Covered Product,  
9 Defendants shall be allowed to deduct the amount of lead which is deemed “naturally occurring”  
10 (Naturally Occurring Lead”) in any ingredient listed in **Table 1** that is contained in that Covered  
11 Product under the following conditions: For each year that Defendants claim entitlement to a  
12 “naturally occurring” allowance, Defendants shall provide ERC with the following information:  
13 (a) Defendants must produce to ERC a list of each ingredient in the Covered Product for which a  
14 “naturally occurring” allowance is claimed; (b) Defendants must provide ERC with  
15 documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows  
16 the amount of lead, if any, contained in any ingredient listed in **Table 1** that is contained in the  
17 Covered Product and for which Defendants intend to deduct Naturally Occurring Lead; (c) If the  
18 laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is  
19 contained in the Covered Product, Defendants shall be entitled to deduct up to the full amount of  
20 the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead  
21 actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does  
22 not contain an ingredient listed in **Table 1**, Defendants shall not be entitled to a deduction for  
23 Naturally Occurring Lead in the Covered Product for that ingredient..

24 To deduct the Naturally Occurring Lead in any Covered Product for the purposes  
25 of determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this  
26 Section 3.1.4, for the twelve-month period following the first anniversary of the Effective Date,  
27 Defendants shall provide to ERC, within thirty (30) days after the first anniversary of the  
28 Effective Date, the documentation required under Section 3.1.4(a) and (b). Thereafter, for the

1 next three (3) additional consecutive anniversaries after the Effective Date, if the Defendants  
 2 deduct the Naturally Occurring Lead for purposes of calculating the Daily Lead Exposure Level  
 3 for the twelve-month period following each such anniversary date, Defendants shall provided to  
 4 ERC, within thirty (30) days after each such anniversary date, the documentation required under  
 5 Section 3.1.4(a) and (b).

6 **TABLE 1**

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

12  
 13 **3.2 Clear and Reasonable Warnings**

14 If Defendants are required to provide a warning pursuant to Section 3.1, the following  
 15 warning must be utilized (“Warning”):

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

19 Defendants shall use the phrase “cancer and” in the Warning if Defendants have reason to  
 20 believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as  
 21 determined pursuant to the quality control methodology set forth in Section 3.4 or if Defendants  
 22 have reason to believe that another Proposition 65 chemical is present which may require a cancer  
 23 warning. As identified in the brackets, the warning shall appropriately reflect whether there is  
 24 lead, cadmium, or both chemicals present in each of the Covered Products.

25 The Warning shall be securely affixed to or printed upon the label of each Covered  
 26 Product and it must be set off from other surrounding information and enclosed in a box. In  
 27 addition, for any Covered Product sold over the internet, the Warning shall appear on the  
 28 checkout page when a California delivery address is indicated for any purchase of any Covered

1 Product. An asterisk or other identifying method must be utilized to identify which products on  
2 the checkout page are subject to the Warning. In no event shall any internet or website  
3 Warning be contained in or made through a link.

4 The Warning shall be at least the same size as the largest of any other health or safety  
5 warnings also appearing on the website or on the label of the Covered Product or its product  
6 packaging and the word “WARNING” shall be in all capital letters and in bold print. No  
7 statements intended to or likely to have the effect of diminishing the impact of the Warning on the  
8 average lay person shall accompany the Warning. Further no statements may accompany the  
9 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
10 less harmful effect of the listed chemical.

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

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

### 18 **3.3 Conforming Covered Products**

19 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
20 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure  
21 Level” is no more than 4.1 micrograms of cadmium per day as determined by the quality control  
22 methodology described in Section 3.4.

### 23 **3.4 Testing and Quality Control Methodology**

24 **3.4.1** Beginning within one year of the Effective Date, Defendants shall  
25 arrange for lead and cadmium testing of the Covered Products at least once a year for a  
26 minimum of five consecutive years by arranging for testing of three (3) randomly selected  
27 samples of each of the Covered Products, in the form intended for sale to the end-user, which  
28 Defendants intend to sell or are manufacturing for sale in California, directly selling to a

1 consumer in California or "Distributing into the State of California." If tests conducted  
2 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
3 each of five consecutive years, then the testing requirements of this Section will no longer be  
4 required as to that Covered Product. However, if during or after the five-year testing period,  
5 Defendants change ingredient suppliers for any of the Covered Products and/or reformulate  
6 any of the Covered Products, Defendants shall test that Covered Product annually for at least  
7 four (4) consecutive years after such change is made.

8 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or  
9 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the  
10 three (3) randomly selected samples of the Covered Products will be controlling.

11 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
12 laboratory method that complies with the performance and quality control factors appropriate  
13 for the method used, including limit of detection, qualification, accuracy, and precision that  
14 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
15 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

16 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
17 independent third party laboratory certified by the California Environmental Laboratory  
18 Accreditation Program or an independent third-party laboratory that is registered with the  
19 United States Food & Drug Administration.

20 **3.4.5** Nothing in this Consent Judgment shall limit Defendants' ability to  
21 conduct, or require that others conduct, additional testing of the Covered Products, including  
22 the raw materials used in their manufacture.

23 **3.4.6** Within thirty (30) days of ERC's written request, Defendants shall  
24 deliver lab reports obtained pursuant to Section 3.4 to ERC. Defendants shall retain all test  
25 results and documentation for a period of five years from the date of each test.

#### 26 **4. SETTLEMENT PAYMENT**

27 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
28 payments, attorney's fees, and costs, Defendants shall make a total payment of \$200,000.00



1 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”).

2 Defendants shall make this payment by wire transfer to ERC’s account, for which ERC will  
3 give Defendants the necessary account information. The Total Settlement Amount shall be  
4 apportioned as follows:

5 **4.2** \$74,500.00 shall be considered a civil penalty pursuant to California Health and  
6 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$55,875.00) of the civil penalty to  
7 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
8 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
9 Code section 25249.12(c). ERC will retain the remaining 25% (\$18,625.00) of the civil  
10 penalty.

11 **4.3** \$12,196.04 shall be distributed to ERC as reimbursement to ERC for reasonable  
12 costs incurred in bringing this action.

13 **4.4** \$55,626.23 shall be distributed to ERC as an Additional Settlement Payment  
14 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
15 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
16 allegedly caused by Defendant in this matter. These activities are detailed  
17 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic  
18 chemicals in dietary supplement products in California. ERC’s activities have had, and will  
19 continue to have, a direct and primary effect within the State of California because California  
20 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or  
21 cadmium in dietary supplements and/or by providing clear and reasonable warnings to  
22 California consumers prior to ingestion of the products.

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

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

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

20 **4.5** \$40,350.00 shall be distributed to Michael Freund as reimbursement of ERC's  
21 attorney's fees, while \$17,327.73 shall be distributed to ERC for its in-house legal fees. Except  
22 as explicitly provided herein, each Party shall bear its own fees and costs.

23 **4.6** In the event that Defendants fails to remit the Total Settlement Amount owed  
24 under Section 4 of this Consent Judgment on or before the Due Date, Defendants shall be  
25 deemed to be in material breach of their obligations under this Consent Judgment. ERC shall  
26 provide written notice of the delinquency to Defendants via electronic mail. If Defendants fail  
27 to deliver the Total Settlement Amount within five (5) days from the written notice, the Total  
28 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the

1 California Code of Civil Procedure section 685.010. Additionally, Defendants agree to pay  
2 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under  
3 this Consent Judgment.

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

5 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
6 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
7 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
8 modified consent judgment.

9 **5.2** If Defendants seek to modify this Consent Judgment under Section 5.1, then  
10 Defendants must provide written notice to ERC of their intent ("Notice of Intent"). If ERC  
11 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
12 must provide written notice to Defendants within thirty (30) days of receiving the Notice of  
13 Intent. If ERC notifies Defendants in a timely manner of ERC's intent to meet and confer, then  
14 the Parties shall meet and confer in good faith as required in this Section. The Parties shall  
15 meet in person or via telephone within thirty (30) days of ERC's notification of its intent to  
16 meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
17 modification, ERC shall provide to Defendants a written basis for its position. The Parties  
18 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
19 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
20 deadlines for the meet-and-confer period.

21 **5.3 Change in Proposition 65.** If (1) Proposition 65 or its implementing regulations  
22 (including but not limited to the safe harbor "no significant risk level" and "maximum allowable  
23 dose level" for lead or cadmium or any "alternative risk level" adopted by regulation or  
24 California Supreme Court decision) are changed from their terms as they exist on the date of  
25 entry of this Consent Judgment in a manner that impacts the "Daily Lead Exposure Level" or  
26 "Daily Cadmium Exposure Level" for any of the Covered Products, or (2) after entry of this  
27 Consent Judgment, OEHHA takes some other final regulatory action for nutritional supplement  
28 products similar to the Covered Products and such final regulatory action impacts the "Daily

1 Lead Exposure Level” or the “Daily Cadmium Exposure Level” for any of the Covered Products,  
2 or (3) after entry of this Consent Judgment, OEHHA adopts a regulation that eliminates the  
3 requirement for warnings for lead or cadmium for the Covered Products, then either Party may  
4 seek to modify this Consent Judgment.

5 **5.4** In the event that Proposition 65 is repealed, or otherwise invalidated, by  
6 regulation or California or United States Supreme Court case law, and as a result of such repeal  
7 or invalidation the Covered Products are no longer subject to Proposition 65, then the  
8 Defendants shall have no further obligations as to the injunctive terms pursuant to this Consent  
9 Judgment with respect to, and to the extent that, the Covered Products are so affected.

10 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
11 **JUDGMENT**

12 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
13 terminate this Consent Judgment.

14 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
15 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
16 inform Defendants in a reasonably prompt manner of its test results, including information  
17 sufficient to permit Defendants to identify the Covered Products at issue. Defendants shall,  
18 within thirty (30) days following such notice, provide ERC with testing information, from an  
19 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
20 demonstrating Defendants’ compliance with the Consent Judgment. The Parties shall first  
21 attempt to resolve the matter prior to ERC taking any further legal action.

22 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

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

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

5 ERC on behalf of itself only, and Defendants on behalf of themselves only, acknowledge and  
6 understand the significance and consequences of this specific waiver of California Civil Code  
7 section 1542.

8 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
9 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
10 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

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

14 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

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

26 Chris Heptinstall, Executive Director, Environmental Research Center  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Ph: (619) 500-3090  
Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

1 With a copy to:  
2 Michael Freund  
3 Michael Freund & Associates  
4 1919 Addison Street, Suite 105  
5 Berkeley, CA 94704  
6 Ph: (510) 540-1992  
7 Email: freund1@aol.com

8 **FOR HALEN BRANDS, INC., individually and dba OWYN; ONLY WHAT YOU NEED,**  
9 **INC., individually and dba OWYN:**

10 Halen Brands, Inc.  
11 Only What You Need, Inc.

12 Name: Brad Moose

13 Title: COO

14 Address and phone: 100 Passaic Ave. #100, Fairfield, NJ 07004, 833-533-7061

15 Email: kwasniewski@braunhagey.com

16 With a copy to:  
17 David H. Kwasniewski  
18 BraunHagey & Borden LLP  
19 351 California St, 10<sup>th</sup> Fl  
20 San Francisco, CA 94104  
21 Ph: (415) 599-0210  
22 Email: kwasniewski@braunhagey.com

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
28 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
prior to the hearing on the motion.

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

**13. EXECUTION AND COUNTERPARTS**

This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
2 as the original signature.

#### 3 **14. DRAFTING**

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

#### 12 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

#### 17 **16. ENFORCEMENT**

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

#### 26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and  
28 understanding of the Parties with respect to the entire subject matter herein, and any and all



1 prior discussions, negotiations, commitments, and understandings related hereto. No  
2 representations, oral or otherwise, express or implied, other than those contained herein have  
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
4 herein, shall be deemed to exist or to bind any Party.

5 17.2 Each signatory to this Consent Judgment certifies that he or she is fully  
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

7 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
8 **CONSENT JUDGMENT**

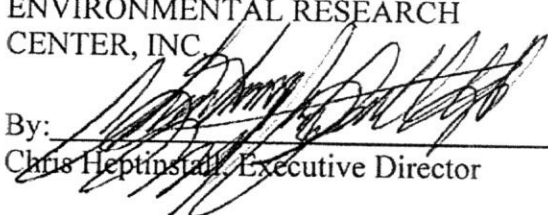
9 This Consent Judgment has come before the Court upon the request of the Parties. The  
10 Parties request the Court to fully review this Consent Judgment and, being fully informed  
11 regarding the matters which are the subject of this action, to:

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

15 (2) Make the findings pursuant to California Health and Safety Code section  
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

18  
19 Dated: 3/19/, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC.  
By:   
Chris Heptinstall, Executive Director

23 Dated: \_\_\_\_\_, 2021

HALEN BRANDS, INC., individually and  
dba OWYN  
\_\_\_\_\_  
By:  
Its:

1 prior discussions, negotiations, commitments, and understandings related hereto. No  
2 representations, oral or otherwise, express or implied, other than those contained herein have  
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
4 herein, shall be deemed to exist or to bind any Party.

5 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

7 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
8 **CONSENT JUDGMENT**

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

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

15 (2) Make the findings pursuant to California Health and Safety Code section  
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

18  
19 Dated: \_\_\_\_\_, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC.

20  
21 By: \_\_\_\_\_  
22 Chris Heptinstall, Executive Director

23 Dated: 3/19/, 2021

24 HALEN BRANDS, INC., individually and

dba OWYN  
DocuSigned by:

*Brad Moose*

E36882D20DBC42A...

25 By:

26 Its:

1 Dated: 3/19/2021, 2021

ONLY WHAT YOU NEED, INC.,  
individually and dba OWYN

DocuSigned by:

Brad Moose

By: Brad Moose

Its: COO

7 **APPROVED AS TO FORM:**

8 Dated: 3/19/2021, 2021

MICHAEL FREUND & ASSOCIATES

By: 

Michael Freund

Attorney for Plaintiff Environmental  
Research Center, Inc.

13 Dated: 3/19/2021, 2021

BRAUNHAGEY & BORDEN LLP

DocuSigned by:

By: David Kwasniewski

David Kwasniewski

Attorney for Defendants

18 **ORDER AND JUDGMENT**

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

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: \_\_\_\_\_, 2021

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

January 8, 2020

**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:

**Halen Brands, Inc., individually and dba OWYN**  
**Only What You Need, Inc., individually and dba OWYN**

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

1. OWYN Only What You Need Chocolate Chip Cookie Dough 100% Plant-Based Bar - Lead
2. OWYN Only What You Need Chocolate Chip, Cranberry 100% Plant-Based Bar - Lead
3. OWYN Only What You Need Plant-Based Drink Strawberry Banana - Lead
4. OWYN Only What You Need 100% Plant Protein Powder Dark Chocolate – Lead, Cadmium
5. OWYN Only What You Need Plant-Based Drink Dark Chocolate - Lead
6. OWYN Only What You Need Plant-Based Drink Cold Brew Coffee - Lead
7. OWYN Only What You Need Plant-Based Drink Smooth Vanilla - Lead
8. OWYN Only What You Need 100% Plant Protein Powder Smooth Vanilla - Lead
9. OWYN Only What You Need Ginger, Turmeric 100% Plant-Based Bar - Lead

January 8, 2020

Page 2

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

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

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 route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 8, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [freund1@aol.com](mailto:freund1@aol.com).**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Halen Brands, Inc., individually and dba OWYN and Only What You Need, Inc., individually and dba OWYN 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 Halen Brands, Inc., individually and dba OWYN and Only What You Need, Inc., individually and dba OWYN**

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 chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: January 8, 2020

---

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 January 8, 2020 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  
Halen Brands, Inc., individually and dba OWYN  
100 Passaic Ave, Ste 100  
Fairfield, NJ 07004

Corporation Service Company  
(Registered Agent for Only What You Need, Inc.,  
individually and dba OWYN)  
251 Little Falls Dr  
Wilmington, DE 19808

Current President or CEO  
Only What You Need, Inc., individually and dba OWYN  
100 Passaic Ave, Ste 100  
Fairfield, NJ 07004

Cogency Global Inc.  
(Registered Agent for Halen Brands, Inc., individually  
and dba OWYN)  
14 Scenic Drive  
Dayton, NJ 08810

Cogency Global Inc.  
(Registered Agent for Halen Brands, Inc., individually  
and dba OWYN)  
850 New Burton Road, Ste 201  
Dover, DE 19904

Cogency Global Inc.  
(Registered Agent for Only What You Need, Inc.,  
individually and dba OWYN)  
14 Scenic Drive  
Dayton, NJ 08810

On January 8, 2020 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 January 8, 2020 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:



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

January 8, 2020

Page 5

Nancy O'Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

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

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

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

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

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

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

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

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

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

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

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

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

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

January 8, 2020

Page 6

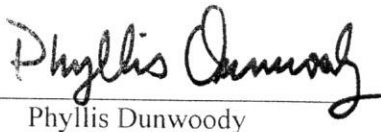
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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 January 8, 2020 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 January 8, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Phyllis Dunwoody

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

January 8, 2020

Page 7

**Service List**

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	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 Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	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	
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	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, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	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, Glenn County Post Office Box 430 Willows, CA 95988	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, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	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, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	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, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012			

## 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

---

<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.

---

<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.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## EXHIBIT B

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

March 19, 2020

**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:

**Halen Brands, Inc., individually and dba OWYN**  
**Only What You Need, Inc., individually and dba OWYN**

**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. Owyn Only What You Need Plant Based Drink Cookies n' Cream - Lead**
- 2. Owyn Meal Replacement Shake Chocolate - Lead**
- 3. Owyn Only What You Need Plant-Based Drink Turmeric Golden Mylk – 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.

March 19, 2020

Page 2

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 March 19, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [freund1@aol.com](mailto:freund1@aol.com).**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Halen Brands, Inc., individually and dba OWYN and Only What You Need, Inc., individually and dba OWYN 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 Halen Brands, Inc., individually and dba OWYN and Only What You Need, Inc., individually and dba OWYN**

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: March 19, 2020

---

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 March 19, 2020, 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  
Halen Brands, Inc., individually and  
dba OWYN  
100 Passaic Ave, Ste 100  
Fairfield, NJ 07004

Cogency Global Inc.  
(Registered Agent for Only What You Need, Inc.,  
individually and dba OWYN)  
850 New Burton Road, Ste 201  
Dover, DE 19904

Current President or CEO  
Only What You Need, Inc.,  
individually and dba OWYN  
100 Passaic Ave, Ste 100  
Fairfield, NJ 07004

Cogency Global Inc.  
(Registered Agent for Halen Brands, Inc., individually  
and dba OWYN)  
14 Scenic Drive  
Dayton, NJ 08810

Cogency Global Inc.  
(Registered Agent for Halen Brands, Inc.,  
individually and dba OWYN)  
850 New Burton Road, Ste 201  
Dover, DE 19904

Cogency Global Inc.  
(Registered Agent for Only What You Need, Inc.,  
individually and dba OWYN)  
14 Scenic Drive  
Dayton, NJ 08810

On March 19, 2020, 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 March 19, 2020, 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:

March 19, 2020

Page 5

Nancy O'Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

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

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcca.org

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

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

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

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

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

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

March 19, 2020

Page 6

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

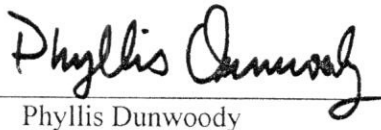
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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 March 19, 2020, 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 March 19, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

**Service List**

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Sierra County 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012		



## 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

---

<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.

---

<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.