

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

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ALAMEDA**

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

14 **Plaintiff,**

15 **vs.**

16 **NUTRA HOLDINGS, INC., individually**  
17 **and dba JACKED FACTORY;**  
18 **NUTRASCIENCE LABS, INC.;**  
19 **NUTRASCIENCE LABS IP**  
20 **CORPORATION; TWINLAB**  
21 **CONSOLIDATION CORPORATION;**  
22 **TWINLAB CORPORATION; TWINLAB**  
23 **CONSOLIDATED HOLDINGS, INC.; and**  
24 **DOES 1-100**

25 **Defendants.**

**Case No. RG20074708**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

September 23, 2020  
Trial Date: None set

1     **1. INTRODUCTION**

2           **1.1**     On September 23, 2020 Plaintiff Environmental Research Center, Inc. (“ERC”),  
3 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
5 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
6 (“Proposition 65”), against Nutra Holdings, Inc., individually and dba Jacked Factory ( “Nutra  
7 Holdings”), among other defendants. In this action, ERC alleges that a number of products  
8 manufactured, distributed, or sold by Nutra Holdings contain lead, a chemical listed under  
9 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical  
10 at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
11 individually as a “Covered Product” or collectively as “Covered Products”) are:

- 12       (1) Jacked Factory Nitro Surge Shred Thermogenic Pre-Workout Fruit Punch,
- 13       (2) Jacked Factory Nitro Surge Pre-Workout Sour Peach Rings,
- 14       (3) Jacked Factory Green Surge Greens Powder Sour Apple,
- 15       (4) Jacked Factory Dry XT Water Weight Loss Agent,
- 16       (5) Jacked Factory Build XT Daily Muscle Builder Fruit Punch,
- 17       (6) Jacked Factory Prima Surge Natural Testosterone Booster,
- 18       (7) Jacked Factory Diet XT Body Recomposition Agent,
- 19       (8) Jacked Factory Nitro Surge Pre-Workout Blue Raspberry,
- 20       (9) Jacked Factory Nitro Surge Pre-Workout Cotton Candy,
- 21       (10) Jacked Factory Nitro Surge Shred Thermogenic Pre-Workout Lemon Lime,
- 22       (11) Jacked Factory Nitro Surge Shred Thermogenic Pre-Workout Watermelon,
- 23       (12) Jacked Factory Nitro Surge Pre-Workout Fruit Punch,
- 24       (13) Jacked Factory Burn XT Thermogenic Fat Burner Strawberry Lemonade,
- 25       (14) Jacked Factory Nitro Surge Pre-Workout Strawberry Margarita,
- 26       (15) Jacked Factory Nitro Surge Pre-Workout Sour Gummy,
- 27       (16) Jacked Factory Green Surge Green Superfood Capsules,
- 28       (17) Jacked Factory Hydra Surge Electrolytes Fruit Punch,

- 1 (18) Jacked Factory Hydra Surge Electrolytes Orange Mango,  
2 (19) Jacked Factory Nitro Surge Pre-Workout Lemon Lime, and  
3 (20) Jacked Factory Nitro Surge Pre-Workout ~~Lemon Lime,~~ Arctic White JW ~~OH~~ NJ  
4 (21) Jacked Factory EAA Surge Premium EAA Formula Pineapple,  
5 (22) Jacked Factory Growth Surge Post-Workout Swoleberry,  
6 (23) Jacked Factory Intra Surge Intra-Workout Fruit Punch,  
7 (24) Jacked Factory Authentic ISO 100% Grass-Fed Isolate Chocolate Peanut Butter,  
8 (25) Jacked Factory Power Build Post-Workout Mixed Berry,  
9 (26) Jacked Factory Crea Surge Creatine Monohydrate + elevATP Fruit Punch,  
10 (27) Jacked Factory Authentic Whey Muscle Building Whey Protein Salted Chocolate  
11 Caramel,  
12 (28) Jacked Factory Green Surge Greens Powder Lemon Lime,  
13 (29) Jacked Factory Hydra Surge Electrolytes Watermelon, and  
14 (30) Jacked Factory Nitro Surge Pre-Workout Pineapple.

15 1.2 ERC and Nutra Holdings are hereinafter referred to individually as a "Party" or  
16 collectively as the "Parties."

17 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
18 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
19 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
20 and encouraging corporate responsibility.

21 1.4 Nutra Holdings manufactures, distributes, and/or sells the Covered Products.

22 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation  
23 dated March 10, 2020, April 2, 2020, June 5, 2020, and July 16, 2020 that were served on the  
24 California Attorney General, other public enforcers, and Nutra Holdings ("Notices"). True and  
25 correct copies of the 60-Day Notices dated March 10, 2020, April 2, 2020, June 5, 2020, and  
26 July 16, 2020 are attached hereto as Exhibits A, B, C, and D and each is incorporated herein  
27 by reference. More than 60 days have passed since the Notices were served on the Attorney  
28 General, public enforcers, and Nutra Holdings and no designated governmental entity has filed

1 a Complaint against Nutra Holdings with regard to the Covered Products or the alleged  
2 violations.

3 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by  
4 California consumers exposes them to lead without first receiving clear and reasonable  
5 warnings from Nutra Holdings, which is in violation of California Health and Safety Code  
6 section 25249.6. Nutra Holdings denies all material allegations contained in the Notices and  
7 Complaint, and contends that the exposure to lead from each Covered Product is less than the  
8 0.50 micrograms/day maximum allowable daily level (MADL), and that no warnings are  
9 required. Nutra Holdings further contends that provision of the Proposition 65 warning where  
10 the exposure to the average user is below the 0.50 microgram/day MADL constitutes  
11 "overwarning," and misbrands the Products pursuant to the Food Drug and Cosmetic Act, and  
12 the California Sherman Food and Drug Act.

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

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

23 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered  
24 as a Judgment by this Court.

## 25 **2. JURISDICTION AND VENUE**

26 For purposes of this Consent Judgment and any further court action that may become  
27 necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has subject  
28 matter jurisdiction over the allegations of violations contained in the Complaint and personal

1 jurisdiction over Nutra Holdings as to the acts alleged in the Complaint, that venue is proper in  
2 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
3 final resolution of all claims up through and including the Effective Date that were or could have  
4 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

6 **3.1** Beginning on the Effective Date, Nutra Holdings shall be permanently enjoined  
7 from manufacturing for sale in the State of California, “Distributing into the State of  
8 California,” or directly selling in the State of California, any Covered Products that expose a  
9 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it  
10 meets the warning requirements under Section 3.2.

11 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
12 of California” shall mean to directly ship a Covered Product into California for sale in  
13 California or to sell a Covered Product to a distributor that Nutra Holdings knows or has reason  
14 to know will sell the Covered Product in California.

15 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
16 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
17 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
18 product (using the largest serving size appearing on the product label), multiplied by servings  
19 of the product per day (using the largest number of recommended daily servings appearing on  
20 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section  
21 3.5, amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label  
22 contains no recommended daily servings, then the number of recommended daily servings  
23 shall be one.

24 **3.2 Clear and Reasonable Warnings**

25 If Nutra Holdings is required to provide a warning pursuant to Section 3.1, one of the  
26 following warnings must be utilized (“Warning”):

27 ///


28 ///

1           **OPTION 1:**

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

5           or

6           **OPTION 2:**

7            **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

8           Nutra Holdings shall use the phrase “cancer and” in the Warning if Nutra Holdings has  
9           reason to believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead  
10          as determined pursuant to the quality control methodology set forth in Section 3.4. For the Option  
11          2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with  
12          a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than  
13          the height of the word “**WARNING.**”

14          For sales of Covered Products in retail stores, the Warning shall be securely affixed to  
15          or printed upon the label of each Covered Product distributed or sold in California or to  
16          California consumers. If the Warning is provided on the label, it must be set off from other  
17          surrounding information and enclosed in a box.

18          For any Covered Product sold over the internet to a California delivery address, the  
19          Warning shall appear on the checkout page or otherwise be provided to the purchaser prior to  
20          purchase so long as the Warning is prominently displayed. A Warning is not prominently  
21          displayed if the purchaser has to search for it in the general content of the website. An asterisk  
22          or other identifying method must be utilized to identify which products are subject to the  
23          Warning. The Warning may also be provided by a clearly marked hyperlink using the word  
24          “**WARNING**” in all capital and bold letters on the Covered Product’s primary display page, or  
25          on the checkout page, so long as the hyperlink goes directly to a page prominently displaying  
26          the Warning without content that detracts from the Warning.

27          The Warning shall be at least the same size as the largest of any other health or safety  
28          warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all

1 capital letters and in bold print. No statements intended to or likely to have the effect of  
2 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
3 Further, no statements may accompany the Warning that state or imply that the source of the listed  
4 chemical has an impact on or results in a less harmful effect of the listed chemical.

5 Nutra Holdings must display the above Warning with such conspicuousness as compared  
6 with other words, statements or designs on its website, and on the label, as applicable, to render  
7 the Warning likely to be read and understood by an ordinary individual under customary  
8 conditions of purchase or use of the product.

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

### 12 **3.3 Conforming Covered Products**

13 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
14 Level” is no greater than 0.5 micrograms of lead per day as determined by the quality control  
15 methodology described in Section 3.4, and taking into account any lead allowances for the  
16 ingredients in the Covered Products pursuant to Section 3.5.

### 17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** Beginning within one year of the Effective Date, Nutra Holdings shall  
19 arrange for lead testing of the Covered Products at least once a year for a minimum of three  
20 consecutive years by arranging for testing of one (1) randomly selected sample of each of the  
21 Covered Products, in the form intended for sale to the end-user, which Nutra Holdings intends to  
22 sell or is manufacturing for sale in California, directly selling to a consumer in California or  
23 “Distributing into the State of California,” provided, however, as outlined in Section 3.4.7, that  
24 no testing is required for Covered Products sold with a Warning that complies with Section 3.2.  
25 If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered  
26 Product during each of three consecutive years, then the testing requirements of this Section will  
27 no longer be required as to that Covered Product. However, if during or after the three-year  
28 testing period, Nutra Holdings changes ingredient suppliers for any of the Covered Products

1 and/or reformulates any of the Covered Products, Nutra Holdings shall test that Covered Product  
2 annually for at least two (2) consecutive years after such change is made.

3 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” for each of  
4 the Covered Products, the lead detection result of the one (1) randomly selected sample of that  
5 Covered Product will be controlling.

6 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
7 laboratory method that complies with the performance and quality control factors appropriate  
8 for the method used, including limit of detection and limit of quantification, sensitivity,  
9 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
10 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010  
11 mg/kg.

12 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
13 independent third party laboratory certified by the California Environmental Laboratory  
14 Accreditation Program or an independent third-party laboratory that is registered with the  
15 United States Food & Drug Administration.

16 **3.4.5** Nothing in this Consent Judgment shall limit Nutra Holdings’ ability to  
17 conduct, or require that others conduct, additional testing of the Covered Products, including  
18 the raw materials used in their manufacture.

19 **3.4.6** Nutra Holdings shall retain all test results and documentation for a period  
20 of two years from the date of each test and shall deliver such test results and documentation  
21 obtained pursuant to Section 3.4 to ERC within thirty (30) days of ERC’s written request.

22 **3.4.7** The requirements of Section 3.4.1 of this Consent Judgment shall not  
23 apply to any Covered Product for which a Warning is provided, continuously and without  
24 interruption from the Effective Date, in accordance with Section 3. In the event a Warning is  
25 provided after the Effective Date but Nutra Holdings thereafter ceases to provide the Warning,  
26 the requirements of Section 3.4.1 of this Consent Judgment shall apply beginning immediately  
27 after the date the Warning ceases to be provided or one year after the Effective Date, whichever  
28 date is later, unless Nutra Holdings can show to the satisfaction of ERC that the cessation in





1	Magnesium Hydroxide	Up to 0.4 micrograms/gram
2	Zinc Gluconate	Up to 0.8 micrograms/gram
3	Potassium Chloride	Up to 1.1 micrograms/gram
4	Cocoa-powder	Up to 1.0 micrograms/gram
5	Chocolate Liquor	Up to 1.0 micrograms/gram
6	Cocoa Butter	Up to 0.1 micrograms/gram

7

8 **4. SETTLEMENT PAYMENT**

9 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
10 payments, attorney’s fees, and costs, Nutra Holdings shall make a total payment of  
11 \$100,000.00 (“Total Settlement Amount”) to ERC within 10 days of the Effective Date (“Due  
12 Date”). Nutra Holdings shall make this payment by wire transfer to ERC’s account, for which  
13 ERC will give Nutra Holdings the necessary account information. The Total Settlement  
14 Amount shall be apportioned as follows:

15 **4.2** \$22,350.00 shall be considered a civil penalty pursuant to California Health and  
16 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$16,762.50) of the civil penalty to  
17 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
18 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
19 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,587.50) of the civil penalty.

20 **4.3** \$8,769.87 shall be distributed to ERC as reimbursement to ERC for reasonable  
21 costs incurred in bringing this action.

22 **4.4** \$16,728.94 shall be distributed to ERC as an Additional Settlement Payment  
23 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
24 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
25 allegedly caused by Defendants in this matter. These activities are detailed  
26 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic  
27 chemicals in dietary supplement products in California. ERC’s activities have had, and will  
28 continue to have, a direct and primary effect within the State of California because California

1 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary  
2 supplements and/or by providing clear and reasonable warnings to California consumers prior  
3 to ingestion of the products.

4         Based on a review of past years' actual budgets, ERC is providing the following list of  
5 activities ERC engages in to protect California consumers through Proposition 65 citizen  
6 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
7 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
8 supplement products that may contain lead and are sold to California consumers. This work  
9 includes continued monitoring and enforcement of past consent judgments and settlements to  
10 ensure companies are in compliance with their obligations thereunder, with a specific focus on  
11 those judgments and settlements concerning lead. This work also includes investigation of new  
12 companies that ERC does not obtain any recovery through settlement or judgment; (2)  
13 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary  
14 Compliance Program by acquiring products from companies, developing and maintaining a  
15 case file, testing products from these companies, providing the test results and supporting  
16 documentation to the companies, and offering guidance in warning or implementing a self-  
17 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM  
18 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of  
19 contaminated products that reach California consumers by providing access to free testing for  
20 lead in dietary supplement products (Products submitted to the program are screened for  
21 ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
22 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
23 that submitted the product).

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

1           **4.5**     \$34,500.00 shall be distributed to Michael Freund as reimbursement of ERC’s  
2 attorney’s fees, while \$17,651.19 shall be distributed to ERC for its in-house legal fees. Except  
3 as explicitly provided herein, each Party shall bear its own fees and costs.

4           **4.6**     In the event that Nutra Holdings fails to remit the Total Settlement Amount  
5 owed under Section 4 of this Consent Judgment on or before the Due Date, Nutra Holdings  
6 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC  
7 shall provide written notice of the delinquency to Nutra Holdings via electronic mail. If Nutra  
8 Holdings fails to deliver the Total Settlement Amount within five (5) days from the written  
9 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate  
10 provided in the California Code of Civil Procedure section 685.010. Additionally, Nutra  
11 Holdings agrees to pay ERC’s reasonable attorney’s fees and costs for any efforts to collect the  
12 payment due under this Section 4 of the Consent Judgment.

13       **5.     MODIFICATION OF CONSENT JUDGMENT**

14           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
15 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
16 or (ii) by a joint motion or application of either Party and upon entry by the Court of a  
17 modified consent judgment.

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

1 to different deadlines for the meet-and-confer period.

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

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
5 terminate this Consent Judgment.

6 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
7 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
8 inform Nutra Holdings in a reasonably prompt manner of its test results, including information  
9 sufficient to permit Nutra Holdings to identify the Covered Products at issue. Nutra Holdings  
10 shall, within thirty (30) days following such notice, provide ERC with testing information,  
11 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and  
12 3.4.4, demonstrating Nutra Holdings' compliance with the Consent Judgment. Any test results  
13 and other information provided pursuant to this Consent Judgment by a Party shall be  
14 maintained in strict confidence by the other Party pursuant to the terms of the Confidentiality  
15 Agreement entered into between the Parties. The Parties shall first attempt to resolve the matter  
16 prior to ERC taking any further legal action. If further legal action in court is taken, the  
17 prevailing party shall be entitled to seek recovery of its reasonable costs and attorneys' fees  
18 from the losing party.

19 **7. APPLICATION OF CONSENT JUDGMENT**

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

28 ///

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 Nutra Holdings and its respective officers,  
4 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
5 franchisees, licensees, contractors, customers (not including private label customers of Nutra  
6 Holdings), manufacturers, contract manufacturers, distributors, wholesalers, retailers, and all  
7 other upstream and downstream entities in the manufacture and distribution chain of any  
8 Covered Product, and the predecessors, successors, and assigns of any of them (collectively,  
9 "Released Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases  
10 and discharges the Released Parties from any and all claims, actions, causes of action, suits,  
11 demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have  
12 been asserted from the handling, use, or consumption of the Covered Products, as to any  
13 alleged violation of Proposition 65 or its implementing regulations arising from the failure to  
14 provide Proposition 65 warnings on the Covered Products in the stream of commerce as of the  
15 Effective Date.

16             **8.2**         ERC on its own behalf only, and Nutra Holdings on its own behalf only,  
17 further waive and release any and all claims they may have against each other relating to the  
18 Covered Products and for all actions or statements made or undertaken in the course of seeking  
19 or opposing enforcement of Proposition 65 in connection with the Notices and Complaint up  
20 through and including the Effective Date, provided, however, that nothing in Section 8 shall  
21 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment. Unless  
22 otherwise specified by this Consent Judgment, including enforcement actions, ERC further  
23 agrees that neither ERC nor its employees, agents or representatives, will assist, induce or  
24 otherwise participate with any other parties in asserting claims, allegations or other complaints  
25 against the Released Parties relating to the Covered Products.

26             **8.3**         It is possible that other claims not known to the Parties, arising out of the facts  
27 alleged in the Notices and Complaint, or relating to the Covered Products will develop or be  
28 discovered. ERC on behalf of itself only, and Nutra Holdings on behalf of itself only,

1 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
2 claims up through and including the Effective Date, including all rights of action therefore.  
3 ERC and Nutra Holdings acknowledge that the claims released in Sections 8.1 and 8.2 above  
4 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
5 any such unknown claims. California Civil Code section 1542 reads as follows:

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

10 ERC on behalf of itself only, and Nutra Holdings on behalf of itself only, acknowledge and  
11 understand the significance and consequences of this specific waiver of California Civil Code  
12 section 1542.

13 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
14 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
15 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

16 **8.5** Nothing in this Consent Judgment shall apply to any of Nutra Holding's  
17 products other than the Covered Products.

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

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

## 22 **10. GOVERNING LAW**

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

## 25 **11. PROVISION OF NOTICE**

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

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

2 Chris Heptinstall, Executive Director, Environmental Research Center  
3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Ph: (619) 500-3090  
6 Email: chris.heptinstall@erc501c3.org

7 With a copy to:

8 Michael Freund  
9 Michael Freund & Associates  
10 1919 Addison Street, Suite 105  
11 Berkeley, CA 94704  
12 Ph: (510) 540-1992  
13 Fax: (510) 371-0885

14 **FOR NUTRA HOLDINGS, INC., individually and dba JACKED FACTORY:**

15 John Williams  
16 65 White Rose Drive Unit 2  
17 St. John's NL A1A 4A5  
18 Canada  
19 Email: john@nutraholdings.com

20 With a copy to:

21 Carol Brophy  
22 Steptoe & Johnson LLP  
23 1 Market Street  
24 Spear Tower, Suite 3900  
25 San Francisco, California 94105  
26 Ph: (415) 365-6724  
27 Email: cbrophy@steptoe.com

28 **12. COURT APPROVAL**

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

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



1           **12.3** Upon Court approval of this Consent Judgment and Nutra Holdings’  
2 compliance with its payment obligations outlined in Section 4.1, ERC shall promptly dismiss  
3 all claims against defendants NutraScience Labs, Inc., NutraScience Labs IP Corporation,  
4 Twinlab Consolidation Corporation, Twinlab Corporation, and Twinlab Consolidated  
5 Holdings, Inc. relating to the Covered Products.

6           **12.4** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
7 void and have no force or effect.

8           **13. EXECUTION AND COUNTERPARTS**

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

12           **14. DRAFTING**

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

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

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

26           **16. ENFORCEMENT**

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

1 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
2 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
3 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
4 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent  
5 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are  
6 provided by law for failure to comply with Proposition 65 or other laws.

7 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

14 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
15 authorized by the Party he or she represents to stipulate to this Consent Judgment.

16 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF  
17 CONSENT JUDGMENT**

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

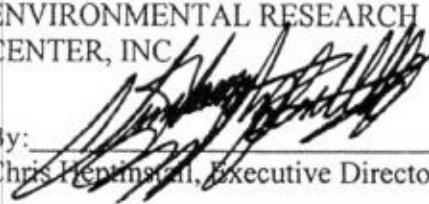
- 21 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
22 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
23 been diligently prosecuted, and that the public interest is served by such settlement; and  
24 (2) Make the findings pursuant to California Health and Safety Code section  
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

26 ///  
27 ///  
28 ///

1 **IT IS SO STIPULATED:**

2 Dated: 1/11, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC

3  
4 By:   
Chris Hentinska, Executive Director

5 Dated: January 26, 2021

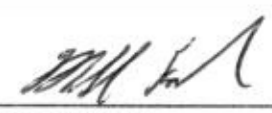
6 NUTRA HOLDINGS, INC., individually and  
7 dba JACKED FACTORY

8   
9 By: John Williams, CEO  
10 Its:

11 **APPROVED AS TO FORM:**


12  
13 Dated: 1/26, 2021

MICHAEL FREUND & ASSOCIATES

14  
15 By:   
16 Michael Freund  
17 Attorney for Environmental Research  
18 Center, Inc.

19 Dated: January 26, 2021

LAW OFFICE OF STACY E. DON

20  
21 By:   
22 Stacy Don  
23 Attorney for Nutra Holdings, Inc.,  
24 individually and dba Jacked Factory  
25  
26  
27  
28

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

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

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.

March 10, 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:

**Nutra Holdings, Inc., individually and dba Jacked Factory**  
**NutraScience Labs, Inc.**  
**NutraScience Labs IP Corporation**  
**Twinlab Consolidation Corporation**  
**Twinlab Corporation**  
**Twinlab Consolidated Holdings, Inc.**

**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. Jacked Factory Nitro Surge Shred Thermogenic Pre-Workout Fruit Punch - Lead**
- 2. Jacked Factory Nitro Surge Pre-Workout Sour Peach Rings - Lead**
- 3. Jacked Factory Green Surge Greens Powder Sour Apple - Lead**
- 4. Jacked Factory Dry XT Water Weight Loss Agent - Lead**
- 5. Jacked Factory Build XT Daily Muscle Builder Fruit Punch - Lead**

6. **Jacked Factory Prima Surge Natural Testosterone Booster - Lead**
7. **Jacked Factory Diet XT Body Recomposition Agent - Lead**
8. **Jacked Factory Nitro Surge Pre-Workout Blue Raspberry - Lead**
9. **Jacked Factory Nitro Surge Pre-Workout Cotton Candy - Lead**
10. **Jacked Factory Nitro Surge Shred Thermogenic Pre-Workout Lemon Lime - Lead**
11. **Jacked Factory Nitro Surge Shred Thermogenic Pre-Workout Watermelon - Lead**
12. **Jacked Factory Nitro Surge Pre-Workout Fruit Punch - Lead**
13. **Jacked Factory Burn XT Thermogenic Fat Burner Strawberry Lemonade - Lead**
14. **Jacked Factory Nitro Surge Pre-Workout Strawberry Margarita - Lead**
15. **Jacked Factory Nitro Surge Pre-Workout Sour Gummy - Lead**
16. **Jacked Factory Green Surge Green Superfood Capsules - Lead**

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

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

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

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

March 10, 2020

Page 3

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

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; Twinlab Consolidated Holdings, Inc.; 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 Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; and Twinlab Consolidated Holdings, Inc.**

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 10, 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 10, 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  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
65 White Rose Drive Unit 2  
St. John's NL A1A 4A5  
Canada

Stewart McKelvey  
(Registered Agent for Nutra Holdings, Inc.,  
individually and dba Jacked Factory)  
PO Box 5038  
1100 Cabot Place  
St John's NL A1C 6K3  
Canada

Current President or CEO  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
888 Carol Ct  
Carol Stream, IL 60188

Current President or CEO  
NutraScience Labs, Inc.  
70 Carolyn Blvd  
Farmingdale, NY 11735

Cogency Global, Inc.  
(Registered Agent for NutraScience Labs, Inc.)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Cogency Global Inc.  
(Registered Agent for Twinlab Consolidated  
Holdings, Inc.)  
321 W. Winnie Lane, #104  
Carson City, NV 89703

Current President or CEO  
Twinlab Consolidation Corporation  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Cogency Global, Inc.  
(Registered Agent for Twinlab Consolidation Corporation)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Current President or CEO  
Twinlab Corporation  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Corporation)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Current President or CEO  
Twinlab Consolidated Holdings, Inc.  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Consolidated Holdings, Inc.)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Consolidation Corporation)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

March 10, 2020

Page 6

Current President or CEO  
NutraScience Labs IP Corporation  
70 Carolyn Blvd  
Farmingdale, NY 11735

Corporation Service Company  
(Registered Agent for Twinlab Corporation)  
251 Little Falls Dr  
Wilmington, DE 19808

Cogency Global Inc.  
(Registered Agent for NutraScience Labs  
IP Corporation)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Current President or CEO  
NutraScience Labs IP Corporation  
632 Broadway, Ste 201  
New York, NY 10012

The Corporation Trust Company  
(Registered Agent for Nutra Holdings, Inc.,  
Individually and dba Jacked Factory)  
Corporation Trust Center  
1209 N. Orange St  
Wilmington, DE 19801

Current President or CEO  
NutraScience Labs, Inc.  
632 Broadway, Ste 201  
New York, NY 10012

Current President or CEO  
Twinlab Consolidation Corporation  
632 Broadway, Ste 201  
New York, NY 10012

Current President or CEO  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
311 Crossways Park Drive  
Woodbury, NY 11797

On March 10, 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 10, 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:

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

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

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

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

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

March 10, 2020

Page 7

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@sdcda.org

Mark Ankorn, 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

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

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

March 10, 2020

Page 8

On March 10, 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 10, 2020, in Fort Oglethorpe, Georgia.

---

Phyllis Dunwoody

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

March 10, 2020

Page 9

**Service List**

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

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

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

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

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

District Attorney, El Dorado  
County  
778 Pacific St  
Placerville, CA 95667

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
Downieville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

**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.



## *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.

**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).

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...*

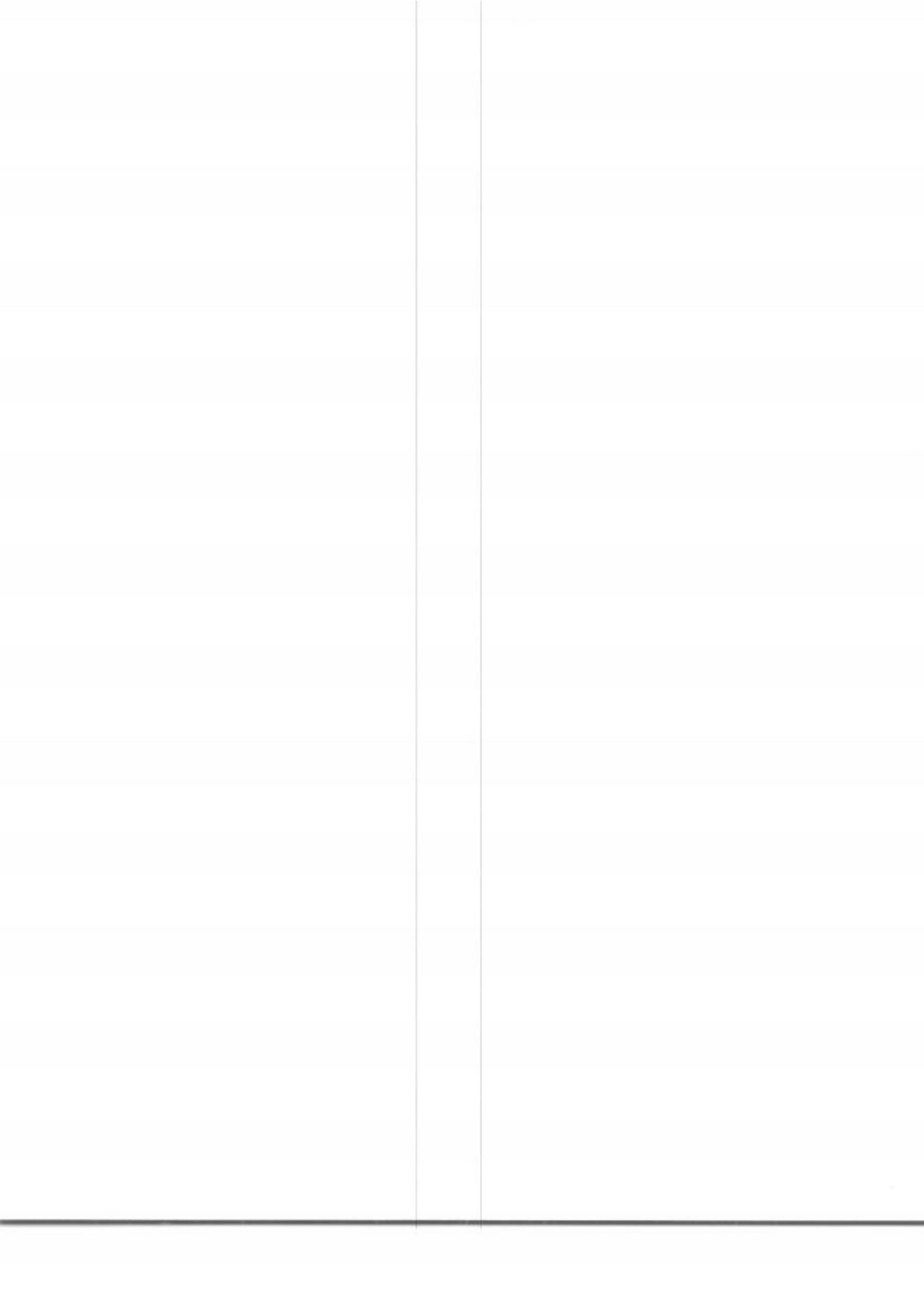
Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

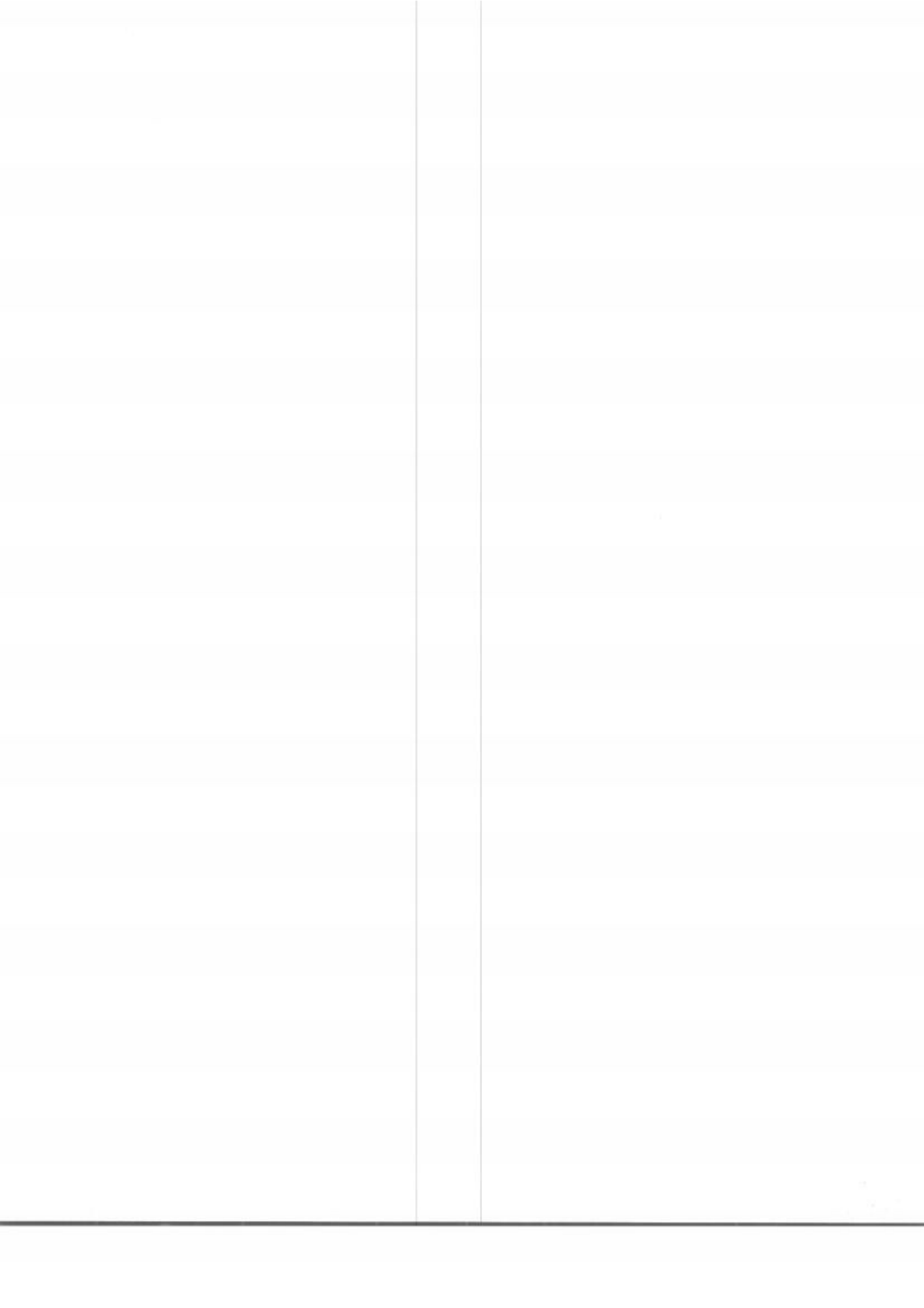
Revised: May 2017

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.

April 2, 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:

Nutra Holdings, Inc., individually and dba Jacked Factory  
NutraScience Labs, Inc.  
NutraScience Labs IP Corporation  
Twinlab Consolidation Corporation  
Twinlab Corporation  
Twinlab Consolidated Holdings, Inc.

**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. Jacked Factory Hydra Surge Electrolytes Fruit Punch - Lead
2. Jacked Factory Hydra Surge Electrolytes Orange Mango - Lead

April 2, 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.

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 April 2, 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 Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; Twinlab Consolidated Holdings, Inc.; and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



April 2, 2020

Page 3

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; and Twinlab Consolidated Holdings, Inc.

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: April 2, 2020



Michael Freund

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 April 2, 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  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
65 White Rose Drive Unit 2  
St. John's NL A1A 4A5  
Canada

Stewart McKelvey  
(Registered Agent for Nutra Holdings, Inc.,  
individually and dba Jacked Factory)  
PO Box 5038  
1100 Cabot Place  
St John's NL A1C 6K3  
Canada

Current President or CEO  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
888 Carol Ct  
Carol Stream, IL 60188

Current President or CEO  
NutraScience Labs, Inc.  
70 Carolyn Blvd  
Farmingdale, NY 11735

Cogency Global, Inc.  
(Registered Agent for NutraScience Labs, Inc.)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Cogency Global Inc.  
(Registered Agent for Twinlab Consolidated  
Holdings, Inc.)  
321 W. Winnie Lane, #104  
Carson City, NV 89703

Current President or CEO  
Twinlab Consolidation Corporation  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Cogency Global, Inc.  
(Registered Agent for Twinlab Consolidation Corporation)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Current President or CEO  
Twinlab Corporation  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Corporation)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Current President or CEO  
Twinlab Consolidated Holdings, Inc.  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Consolidated Holdings, Inc.)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Consolidation Corporation)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

**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 Colby, Georgia 30707.

April 2, 2020

Page 5

Current President or CEO  
NutraScience Labs IP Corporation  
70 Carolyn Blvd  
Farmingdale, NY 11735

Cogency Global Inc.  
(Registered Agent for NutraScience Labs  
IP Corporation)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

The Corporation Trust Company  
(Registered Agent for Nutra Holdings, Inc.,  
Individually and dba Jacked Factory)  
Corporation Trust Center  
1209 N. Orange St  
Wilmington, DE 19801

Current President or CEO  
Twinlab Consolidation Corporation  
632 Broadway, Ste 201  
New York, NY 10012

Corporation Service Company  
(Registered Agent for Twinlab Corporation)  
251 Little Falls Dr  
Wilmington, DE 19808

Current President or CEO  
NutraScience Labs IP Corporation  
632 Broadway, Ste 201  
New York, NY 10012

Current President or CEO  
NutraScience Labs, Inc.  
632 Broadway, Ste 201  
New York, NY 10012

Current President or CEO  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
311 Crossways Park Drive  
Woodbury, NY 11797

On April 2, 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 April 2, 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:

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

April 2, 2020

Page 6

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@ascda.org

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

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

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

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

April 2, 2020

Page 7

On April 2, 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 April 2, 2020, in Fort Oglethorpe, Georgia.

---

Phyllis Dunwoody

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

April 2, 2020

Page 8

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, 2nd 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 2nd 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 4th 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 Bernardino, 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://cehha.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://cehha.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.cehha.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 [P65PublicComments@oehha.ca.gov](mailto:P65PublicComments@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.**

EXHIBIT C

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

**Michael Freund & Associates**

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

Michael Freund, Esq.

June 5, 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:

**Nutra Holdings, Inc., individually and dba Jacked Factory**  
**NutraScience Labs, Inc.**  
**NutraScience Labs IP Corporation**  
**Twinlab Consolidation Corporation**  
**Twinlab Corporation**  
**Twinlab Consolidated Holdings, Inc.**

**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. Jacked Factory Nitro Surge Pre-Workout Lemon Lime - Lead
2. Jacked Factory Nitro Surge Pre-Workout Arctic White - Lead

June 5, 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.

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 June 5, 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 Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; Twinlab Consolidated Holdings, Inc.; 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 Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; and Twinlab Consolidated Holdings, Inc.**

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: June 5, 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 June 5, 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  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
65 White Rose Drive Unit 2  
St. John's NL A1A 4A5  
Canada

Stewart McKelvey  
(Registered Agent for Nutra Holdings, Inc.,  
individually and dba Jacked Factory)  
PO Box 5038  
1100 Cabot Place  
St John's NL A1C 6K3  
Canada

Current President or CEO  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
888 Carol Ct  
Carol Stream, IL 60188

Current President or CEO  
NutraScience Labs, Inc.  
70 Carolyn Blvd  
Farmingdale, NY 11735

Cogeny Global, Inc.  
(Registered Agent for NutraScience Labs, Inc.)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Cogeny Global Inc.  
(Registered Agent for Twinlab Consolidated  
Holdings, Inc.)  
321 W. Winnie Lane, #104  
Carson City, NV 89703

Current President or CEO  
Twinlab Consolidation Corporation  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Cogeny Global, Inc.  
(Registered Agent for Twinlab Consolidation Corporation)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Current President or CEO  
Twinlab Corporation  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Corporation)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Current President or CEO  
Twinlab Consolidated Holdings, Inc.  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Consolidated Holdings, Inc.)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

Kyle Casey  
(Registered Agent for Twinlab Consolidation Corporation)  
4800 T-Rex Avenue, Ste 305  
Boca Raton, FL 33431

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

June 5, 2020

Page 5

Current President or CEO  
NutraScience Labs IP Corporation  
70 Carolyn Blvd  
Farmingdale, NY 11735

Corporation Service Company  
(Registered Agent for Twinlab Corporation)  
251 Little Falls Dr  
Wilmington, DE 19808

Cogency Global Inc.  
(Registered Agent for NutraScience Labs  
IP Corporation)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

Current President or CEO  
NutraScience Labs IP Corporation  
632 Broadway, Ste 201  
New York, NY 10012

The Corporation Trust Company  
(Registered Agent for Nutra Holdings, Inc.,  
Individually and dba Jacked Factory)  
Corporation Trust Center  
1209 N. Orange St  
Wilmington, DE 19801

Current President or CEO  
NutraScience Labs, Inc.  
632 Broadway, Ste 201  
New York, NY 10012

Current President or CEO  
Twinlab Consolidation Corporation  
632 Broadway, Ste 201  
New York, NY 10012

Current President or CEO  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
311 Crossways Park Drive  
Woodbury, NY 11797

On June 5, 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 June 5, 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:

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

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

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

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 Agujito 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@riveoda.org

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

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

Mark Ancom, 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@santaacruzcounty.us

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

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

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

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

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

June 5, 2020

Page 7

On June 5, 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 June 5, 2020, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

Service List

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

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

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

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

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

District Attorney, El Dorado  
County  
778 Pacific St  
Placerville, CA 95667

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

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

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

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

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

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

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

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

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

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

District Attorney, Mariposa  
County  
Post Office Box 750  
Mariposa, CA 95338

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

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

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

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 95917

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

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

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

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

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

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

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
Downsville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
633 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

**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>.

**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.

EXHIBIT D

- 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

**Michael Freund & Associates**

1919 Addison Street, Suite 105

Berkeley, CA 94704

Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

July 16, 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:

Nutra Holdings, Inc., individually and dba Jacked Factory  
NutraScience Labs, Inc.  
NutraScience Labs IP Corporation  
Twinlab Consolidation Corporation  
Twinlab Corporation  
Twinlab Consolidated Holdings, Inc.

**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. Jacked Factory EAA Surge Premium EAA Formula Pineapple - Lead
2. Jacked Factory Growth Surge Post-Workout Swoleberry - Lead
3. Jacked Factory Intra Surge Intra-Workout Fruit Punch - Lead
4. Jacked Factory Authentic ISO 100% Grass-Fed Isolate Chocolate Peanut Butter - Lead
5. Jacked Factory Power Build Post-Workout Mixed Berry - Lead
6. Jacked Factory Crea Surge Creatine Monohydrate + elevATP Fruit Punch - Lead

7. Jacked Factory Authentic Whey Muscle Building Whey Protein Salted Chocolate Caramel - Lead
8. Jacked Factory Green Surge Greens Powder Lemon Lime - Lead
9. Jacked Factory Hydra Surge Electrolytes Watermelon - Lead
10. Jacked Factory Nitro Surge Pre-Workout Pineapple - Lead

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least July 16, 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.

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

July 16, 2020

Page 3

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

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; Twinlab Consolidated Holdings, Inc.; 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 Nutra Holdings, Inc., individually and dba Jacked Factory; NutraScience Labs, Inc.; NutraScience Labs IP Corporation; Twinlab Consolidation Corporation; Twinlab Corporation; and Twinlab Consolidated Holdings, Inc.

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: July 16, 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 July 16, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: **NOTICE OF VIOLATIONS 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"** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

NutraScience Labs, Inc; NutraScience Labs IP Corporation  
Twinlab Consolidation Corporation; Twinlab Corporation;  
Twinlab Consolidated Holdings, Inc.  
c/o Deepi Miller and Willis M. Wagner  
Greenberg Traurig LLP  
1201 K St, Ste 1100  
Sacramento, CA 95814  
Telephone: 916) 868-0655  
Email: wagnerw@gtlaw.com

On July 16, 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  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
65 White Rose Drive Unit 2  
St. John's NL A1A 4A5  
Canada

Stewart McKeivey  
(Registered Agent for Nutra Holdings, Inc.,  
individually and dba Jacked Factory)  
PO Box 5038  
1100 Cabot Place  
St John's NL A1C 6K3  
Canada

Current President or CEO  
Nutra Holdings, Inc., individually and  
dba Jacked Factory  
888 Carol Ct  
Carol Stream, IL 60188

The Corporation Trust Company  
(Registered Agent for Nutra Holdings, Inc.,  
Individually and dba Jacked Factory)  
Corporation Trust Center  
1209 N. Orange St  
Wilmington, DE 19801

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

July 16, 2020

Page 6

On July 16, 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 July 16, 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:

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 Ankecom, 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



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

July 16, 2020

Page 7

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

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

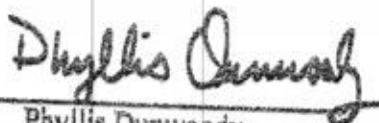
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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 July 16, 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 July 16, 2020, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 309 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 Orville, CA 95963	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Sierra County 100 Courthouse Square, 2nd Floor Downsville, 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 2229 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2nd Street Yuba City, CA 95991
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 301 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 4th Floor Eureka, CA 95501	District Attorney, Orange County 481 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.