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17 Attorney for Defendant D'S NATURALS, LLC, individually and dba
18 NO COW and NO COW LLC

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF ALAMEDA**

21 ENVIRONMENTAL RESEARCH CENTER,
22 INC., a non-profit California corporation,

23 Plaintiff,

24 v.

25 D'S NATURALS, LLC, individually and dba
26 NO COW and NO COW LLC, an Ohio limited
27 liability company; and DOES 1 – 25,

28 Defendants.

CASE NO. RG20072011

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 28, 2020

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On August 28, 2020, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against D’S NATURALS, LLC, individually and dba NO COW and NO COW LLC (“NO
7 COW”) and Does 1-25. Subsequently, on Friday September 25, 2020, a First Amended
8 Complaint was filed. Based on ERC’s Notices of Violation dated June 11, 2020, June 18, 2020,
9 July 16, 2020, and April 20, 2021 (“Notices”), ERC alleges that a number of products
10 manufactured, distributed, or sold by NO COW contain lead, a chemical listed under
11 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical
12 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
13 individually as a “Covered Product” or collectively as “Covered Products”) are:

- 14 • **No Cow Protein Bar Chunky Peanut Butter**
- 15 • **No Cow Protein Bar Carrot Cake**
- 16 • **No Cow Protein Bar Lemon Meringue Pie**
- 17 • **No Cow Protein Bar Mint Cacao Chip**
- 18 • **No Cow Protein Bar Blueberry Cobbler**
- 19 • **No Cow Protein Bar Chocolate Glazed Doughnut**
- 20 • **No Cow Protein Bar Chocolate Fudge Brownie**
- 21 • **No Cow Protein Bar Sticky Cinnamon Roll**
- 22 • **No Cow Protein Bar Raspberry Truffle**
- 23 • **No Cow Protein Bar Vanilla Caramel**
- 24 • **No Cow Protein Bar Birthday Cake**
- 25 • **No Cow Protein Bar Chocolate Chip Cookie Dough**
- 26 • **No Cow Protein Bar Chocolate Coconut**
- 27 • **No Cow Protein Bar Peanut Butter Chocolate Chip**
- 28 • **No Cow Protein Bar Cookies 'N Cream**

1 **1.2** ERC and NO COW are hereinafter referred to individually as a “Party” or
2 collectively as the “Parties.”

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

7 **1.4** For purposes of this Consent Judgment, the Parties agree that NO COW is a
8 business entity that has employed ten or more persons at all times relevant to this action, and
9 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. NO
10 COW manufactures, distributes, and/or sells the Covered Products.

11 **1.5** The original Complaint and First Amended Complaint were based on
12 allegations contained in ERC’s Notices of Violation dated June 11, 2020, June 18, 2020, and
13 July 16, 2020 that were served on the California Attorney General, other public enforcers, and
14 NO COW (“First Three Notices”). True and correct copies of the First Three Notices, dated
15 June 11, 2020, June 18, 2020, and July 16, 2020, are attached hereto as **Exhibits A, B, and C**,
16 and each is incorporated herein by reference. More than 60 days have passed since the First
17 Three Notices were served on the Attorney General, public enforcers, and NO COW and no
18 designated governmental entity has filed a Complaint against NO COW with regard to the
19 Covered Products or the alleged violations related to the First Three Notices.

20 **1.6** On April 20, 2021, ERC served a fourth Notice of Violation (“Fourth Notice”)
21 on the California Attorney General, other public enforcers, and NO COW. A true and correct
22 copy of the Fourth Notice is attached hereto as **Exhibit D** and incorporated by reference. The
23 parties agree and stipulate that the First Amended Complaint be deemed amended as of June
24 30, 2021 to include the product set forth in ERC’s Fourth Notice and that further references to
25 “Complaint” in this Consent Judgment shall be in reference to the amended Complaint. This
26 Consent Judgment shall apply to all Covered Products set forth in Paragraph 1.1, effective 60
27 days after June 30, 2021, provided no public enforcer is diligently pursuing the allegations set
28 forth in ERC’s Fourth Notice. On June 30, 2021 more than 60 days will have passed since

1 ERC's Fourth Notice was served on the Attorney General, public enforcers, and NO COW.

2 **1.7** ERC's Notices and Complaint allege that use of the Covered Products by
3 California consumers exposes them to lead without first receiving clear and reasonable
4 warnings from NO COW, which is in violation of California Health and Safety Code section
5 25249.6. NO COW denies all material allegations contained in the Notices and Complaint.

6 **1.8** The Parties have entered into this Consent Judgment in order to settle,
7 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
8 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
9 or be construed as an admission by any of the Parties or by any of their respective officers,
10 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
11 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
12 issue of law, or violation of law.

13 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
15 any current or future legal proceeding unrelated to these proceedings.

16 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
17 as a Judgment by this Court.

18 **2. JURISDICTION AND VENUE**

19 For purposes of this Consent Judgment and any further court action that may become
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
21 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
22 over NO COW as to the acts alleged in the Complaint, that venue is proper in Alameda County,
23 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
24 all claims up through and including the Effective Date that were or could have been asserted in
25 this action based on the facts alleged in the Notices and Complaint.

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

27 **3.1** Beginning 120 days after the Effective Date (the "Compliance Date"), NO
28 COW shall be enjoined from manufacturing for sale in the State of California, "Distributing

1 into the State of California,” or directly selling in the State of California, any Covered Products
2 unless it (a) is a Conforming Covered Product; or (b) meets the warning requirements under
3 Section 3.2.

4 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
5 of California” shall mean to directly ship a Covered Product into California for sale in
6 California or to sell a Covered Product to a distributor that NO COW knows or has reason to
7 know will sell the Covered Product in California.

8 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level”
9 shall be measured in micrograms, and shall be calculated using the following formula:
10 micrograms of lead per gram of product, multiplied by grams of product per serving of the
11 product (using the largest serving size appearing on the product label), multiplied by servings of
12 the product per day (using the largest number of recommended daily servings appearing on the
13 label), which equals micrograms of lead exposure per day, excluding, pursuant to Section 3.1.3,
14 amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label contains no
15 recommended daily servings, then the number of recommended daily servings shall be one.

16 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product, NO
17 COW shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in
18 any ingredient listed in **Table 1** that is contained in that Covered Product under the following
19 conditions: For each year that NO COW claims entitlement to a “naturally occurring”
20 allowance, NO COW shall provide ERC with the following information: (a) NO COW must
21 produce to ERC a list of each ingredient in the Covered Product, and the amount, measured in
22 grams, of each such ingredient contained therein, for which a “naturally occurring” allowance is
23 claimed; (b) NO COW must provide ERC with documentation of laboratory testing that
24 complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in
25 any ingredient listed in **Table 1** that is contained in the Covered Product and for which NO
26 COW intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the
27 presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product, NO
28 COW shall be entitled to deduct up to the full amount of the allowance for that ingredient, as

1 listed in **Table 1**, but not to exceed the total amount of lead actually contained in that ingredient
 2 in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in
 3 **Table 1**, NO COW shall not be entitled to a deduction for “naturally occurring” lead in the
 4 Covered Product for that ingredient. The information required by Sections 3.1.3 (a) and (b) shall
 5 be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any
 6 year that NO COW shall claim entitlement to the ”naturally occurring” allowance.

7 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram
Chocolate Liquor	Up to 1.0 micrograms/gram
Cocoa Butter	Up to 0.1 micrograms/gram

21
 22 **3.2 Clear and Reasonable Warnings**

23 If NO COW is required to provide a warning pursuant to Section 3.1 one of the following
 24 warnings must be utilized (“Warning”):

25 **OPTION 1:**

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

or

1 **OPTION 2:**

2  **WARNING** : [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov

3 For Option 2, the entire Warning must be in a type size no smaller than the largest type
4 size used for other consumer information on the product. In no case shall the Warning appear in a
5 type size smaller than 6-point type. Further, for Option 2, a symbol consisting of a black
6 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the
7 left of the text of the Warning, in a size no smaller than the height of the word “WARNING.”
8 Where the sign, box, packaging, or shelf tag for the product is not printed using the color yellow,
9 the symbol may be printed in black and white.

10 NO COW shall use the phrase “cancer and” in the Warning if NO COW has reason to
11 believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
12 determined pursuant to the quality control methodology set forth in Section 3.4 or if NO COW
13 has reason to believe that another Proposition 65 chemical is present which may require a cancer
14 warning.

15 The Warning shall be securely affixed to or printed upon the box or packaging of the
16 Covered Products and it must be set off from other surrounding information. In addition, for
17 any Covered Product sold over the internet, the Warning shall appear on the checkout page
18 when a California delivery address is indicated for any purchase of any Covered Product. An
19 asterisk or other identifying method must be utilized to identify which products on the
20 checkout page are subject to the Warning. In no event shall any internet or website Warning
21 be contained in or made through a link.

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

28 NO COW must display the above Warning with such conspicuousness, as compared with

1 other words, statements or designs on the box or packaging, or on its website, if applicable, to
2 render the Warning likely to be read and understood by an ordinary individual under customary
3 conditions of purchase or use of the product.

4 **3.3 Conforming Covered Products**

5 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
6 Level” is no greater than 0.5 micrograms of lead per day as determined by the the exposure
7 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
8 3.4, and that is not known by NO COW to contain other chemicals that violate Proposition 65’s
9 safe harbor or warning thresholds. Covered Products manufactured before the Compliance Date
10 are not subject to Section 3.1.

11 **3.4 Testing and Quality Control Methodology**

12 **3.4.1** Beginning within one year of the Effective Date, NO COW shall arrange
13 for lead testing of the Covered Products at least once a year for a minimum of three
14 consecutive years by arranging for testing of three (3) randomly selected samples of each of
15 the Covered Products, in the form intended for sale to the end-user, which NO COW intends to
16 sell or is manufacturing for sale in California, directly selling to a consumer in California or
17 “Distributing into the State of California.” If tests conducted pursuant to this Section
18 demonstrate that no Warning is required for a Covered Product during each of three
19 consecutive years, then the testing requirements of this Section will no longer be required as to
20 that Covered Product. However, if during or after the three-year testing period, NO COW
21 makes material changes to ingredient suppliers for any of the Covered Products and/or
22 reformulates any of the Covered Products, NO COW shall test that Covered Product annually
23 for at least two (2) consecutive years after such change is made.

24 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” NO COW
25 shall use the highest lead detection result of the three (3) randomly selected samples of the
26 Covered Products.

27 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
28 laboratory method that complies with the performance and quality control factors appropriate

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

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

9 **3.4.5** Nothing in this Consent Judgment shall limit NO COW’s ability to
10 conduct, or require that others conduct, additional testing of the Covered Products, including
11 the raw materials used in their manufacture.

12 **3.4.6** Within thirty (30) days of ERC’s written request, NO COW shall deliver
13 lab reports obtained pursuant to Section 3.4 to ERC. NO COW shall retain all test results and
14 documentation for a period of three years from the date of each test.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement
17 payments, attorney’s fees, and costs, NO COW shall make a total payment of \$200,000.00
18 (“Total Settlement Amount”) to ERC in six periodic payments (the “Periodic Payments”)
19 according to the following payment schedule (“Due Dates”):

- 20 • Payment 1 -- \$33,333.33 within 5 days of the Effective Date
- 21 • Payment 2 -- \$33,333.33 within 35 days of the Effective Date
- 22 • Payment 3 -- \$33,333.33 within 65 days of the Effective Date
- 23 • Payment 4 -- \$33,333.33 within 95 days of the Effective Date
- 24 • Payment 5 -- \$33,333.34 within 125 days of the Effective Date
- 25 • Payment 6 -- \$33,333.34 within 155 days of the Effective Date

26 NO COW shall make these payments by wire transfer to ERC’s account, for which
27 ERC will give NO COW the necessary account information. The Total Settlement Amount
28 shall be apportioned as follows:

1 **4.2** \$65,250.00 shall be considered a civil penalty pursuant to California Health and
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$48,938.00) of the civil penalty to
3 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$16,312.00) of the civil
6 penalty.

7 **4.3** \$15,694.74 shall be distributed to ERC as reimbursement to ERC for reasonable
8 costs incurred in bringing this action.

9 **4.4** \$48,825.58 shall be distributed to ERC as an Additional Settlement Payment
10 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
11 and 3204. ERC will utilize the ASP for activities that address the same public harm as
12 allegedly caused by Defendant in this matter. These activities are detailed
13 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic
14 chemicals in dietary supplement products in California. ERC’s activities have had, and will
15 continue to have, a direct and primary effect within the State of California because California
16 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
17 supplements and/or by providing clear and reasonable warnings to California consumers prior
18 to ingestion of the products.

19 Based on a review of past years’ actual budgets, ERC is providing the following list of
20 activities ERC engages in to protect California consumers through Proposition 65 citizen
21 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
22 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
23 supplement products that may contain lead and are sold to California consumers. This work
24 includes continued monitoring and enforcement of past consent judgments and settlements to
25 ensure companies are in compliance with their obligations thereunder, with a specific focus on
26 those judgments and settlements concerning lead. This work also includes investigation of new
27 companies that ERC does not obtain any recovery through settlement or judgment; (2)
28 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC’s Voluntary

1 Compliance Program by acquiring products from companies, developing and maintaining a
2 case file, testing products from these companies, providing the test results and supporting
3 documentation to the companies, and offering guidance in warning or implementing a self-
4 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM
5 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of
6 contaminated products that reach California consumers by providing access to free testing for
7 lead in dietary supplement products (Products submitted to the program are screened for
8 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
9 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
10 that submitted the product).

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

16 **4.5** \$49,750.30 shall be distributed to Aqua Terra Aeris Law Group as
17 reimbursement of ERC's attorney's fees, while \$20,479.38 shall be distributed to ERC for its
18 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
19 costs.

20 **4.6** In the event that NO COW fails to remit, in full, any of the Periodic Payments
21 owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable Due Date,
22 NO COW shall be deemed to be in material breach of its obligations under this Consent
23 Judgment. ERC shall provide written notice of the delinquency to NO COW via electronic
24 mail. If NO COW fails to deliver the delinquent payment within five (5) days from the written
25 notice, the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1,
26 shall accrue interest at the statutory judgment interest rate provided in the California Code of
27 Civil Procedure section 685.010. Additionally, NO COW agrees to pay ERC's reasonable
28 attorney's fees and costs for any efforts to collect the payment due under this Consent

1 Judgment.

2 **5. MODIFICATION OF CONSENT JUDGMENT**

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

7 **5.2** If NO COW seeks to modify this Consent Judgment under Section 5.1, then NO
8 COW must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to
9 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
10 provide written notice to NO COW within thirty (30) days of receiving the Notice of Intent. If
11 ERC notifies NO COW in a timely manner of ERC’s intent to meet and confer, then the Parties
12 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
13 or via telephone within thirty (30) days of ERC’s notification of its intent to meet and confer.
14 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall
15 provide to NO COW a written basis for its position. The Parties shall continue to meet and
16 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
17 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
18 confer period.

19 **5.3** In the event that NO COW initiates or otherwise requests a modification under
20 Section 5.1, and the meet and confer process leads to a joint motion or application for a
21 modification of the Consent Judgment, NO COW shall reimburse ERC its costs and reasonable
22 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the
23 motion or application.

24 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
25 **JUDGMENT**

26 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
27 terminate this Consent Judgment.

28 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming

1 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
2 inform NO COW in a reasonably prompt manner of its test results, including information
3 sufficient to permit NO COW to identify the Covered Products at issue. NO COW shall, within
4 thirty (30) days following such notice, provide ERC with testing information, from an
5 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
6 demonstrating NO COW's compliance with the Consent Judgment. The Parties shall first
7 attempt to resolve the matter prior to ERC taking any further legal action.

8 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
17 on behalf of itself and in the public interest, and NO COW and its respective officers, directors,
18 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
19 franchisees, licensees, customers (not including private label customers of NO COW),
20 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
21 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
22 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
23 hereby fully releases and discharges the Released Parties from any and all claims, actions,
24 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
25 asserted, or that could have been asserted from the handling, use, or consumption of the
26 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
27 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
28 lead up to and including the Effective Date.

1 **8.2** ERC on its own behalf only, and NO COW on its own behalf only, further
2 waive and release any and all claims they may have against each other for all actions or
3 statements made or undertaken in the course of seeking or opposing enforcement of
4 Proposition 65 in connection with the Notices and Complaint up through and including the
5 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
6 right to seek to enforce the terms of this Consent Judgment.

7 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
8 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
9 discovered. ERC on behalf of itself only, and NO COW on behalf of itself only, acknowledge
10 that this Consent Judgment is expressly intended to cover and include all such claims up
11 through and including the Effective Date, including all rights of action therefore. ERC and NO
12 COW acknowledge that the claims released in Sections 8.1 and 8.2 above may include
13 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
14 unknown claims. California Civil Code section 1542 reads as follows:

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

21 ERC on behalf of itself only, and NO COW on behalf of itself only, acknowledge and
22 understand the significance and consequences of this specific waiver of California Civil Code
23 section 1542.

24 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
25 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
26 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

27 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
28 environmental exposures arising under Proposition 65, nor shall it apply to any of NO COW's
products other than the Covered Products.

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28

1 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

5 **10. GOVERNING LAW**

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

8 **11. PROVISION OF NOTICE**

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

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

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

18 With a copy to:
19 MATTHEW C. MACLEAR
20 ANTHONY M. BARNES
21 AQUA TERRA AERIS LAW GROUP
22 4030 Martin Luther King Jr. Way
23 Oakland, CA 94609
24 Telephone: (415) 568-5200
25 Email: mcm@atalawgroup.com
26 amb@atalawgroup.com

27 **FOR D’S NATURALS, LLC, individually and dba NO COW and NO COW LLC:**

28 Eric Haddenhorst
No Cow
3457 Ringsby Court, Unit 100A
Denver, CO 80216
Telephone: (612) 240-4188
Email: eric@nocow.com

///

1 With a copy to:

2 WILLIAM F. TARANTINO
3 MORRISON & FOERSTER LLP
4 425 Market St.
5 San Francisco, CA 94105
6 Telephone: (415) 268-7000
7 Email: wtarantino@mofo.com

8 **12. COURT APPROVAL**

9 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
10 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
11 Consent Judgment.

12 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
13 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
14 prior to the hearing on the motion.

15 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
16 void and have no force or effect.

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

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

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

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

6 **16. ENFORCEMENT**

7 ERC reserves the exclusive right to enforce the terms of the Consent Judgment, and
8 may, by motion or order to show cause before the Superior Court of Alameda County, enforce
9 the terms and conditions contained in this Consent Judgment. In any action brought by ERC to
10 enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as
11 are provided by law for failure to comply with the Consent Judgment. To the extent the failure
12 to comply with the Consent Judgment constitutes a violation of Proposition 65 or other laws,
13 ERC shall not be limited to enforcement of this Consent Judgment, but may seek in another
14 action whatever fines, costs, penalties, or remedies as are provided by law for failure to comply
15 with Proposition 65 or other laws. NO COW reserves ay and all defenses to any future
16 Proposition 65 enforcement by ERC, including enforcement of this Consent Judgment.

17 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

24 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment.

26 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
27 **CONSENT JUDGMENT**

28 This Consent Judgment has come before the Court upon the request of the Parties. The

1 Parties request the Court to fully review this Consent Judgment and, being fully informed
2 regarding the matters which are the subject of this action, to:

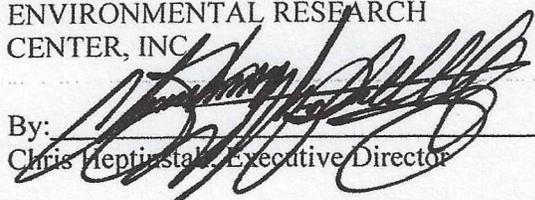
3 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
4 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
5 been diligently prosecuted, and that the public interest is served by such settlement; and

6 (2) Make the findings pursuant to California Health and Safety Code section
7 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

8 **IT IS SO STIPULATED:**

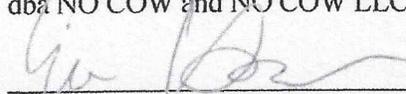
9 Dated: 6/14/, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC

10
11 By: 
Chris Heptinstall, Executive Director

12
13 Dated: 6/16, 2021

D'S NATURALS, LLC, individually and
dba NO COW and NO COW LLC

14
15 
16 By: Eric Haddenhorst
17 Its: President & Authorized Officer

18 **APPROVED AS TO FORM:**

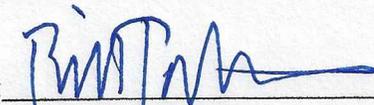
19 Dated: June 14, 2021

AQUA TERRA AERIS LAW GROUP

20 By: 
21 Matthew C. Maclear
22 Anthony M. Barnes
23 Attorneys for Plaintiff
Environmental Research Center, Inc.

24 Dated: 6/16, 2021

MORRISON & FOERSTER LLP

25
26 By: 
27 William F. Tarantino
28 Attorney for D's Naturals, LLC,
individually and dba No Cow and No
Cow LLC

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

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EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

June 11, 2020

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

D's Naturals, LLC, individually and dba No Cow and No Cow LLC

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 11, 2020
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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. **No Cow Protein Bar Chunky Peanut Butter - Lead**
2. **No Cow Protein Bar Carrot Cake - Lead**
3. **No Cow Protein Bar Lemon Meringue Pie - Lead**
4. **No Cow Protein Bar Mint Cacao Chip - Lead**
5. **No Cow Protein Bar Blueberry Cobbler - Lead**
6. **No Cow Protein Bar Chocolate Glazed Doughnut - Lead**
7. **No Cow Protein Bar Chocolate Fudge Brownie - Lead**
8. **No Cow Protein Bar Sticky Cinnamon Roll - 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 June 11, 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 Violator violated Proposition 65 because it 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 Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 11, 2020
Page 3

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 ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in dark ink, appearing to read "Matthew Maclear", is written over a horizontal line. The signature is fluid and cursive.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to D's Naturals, LLC, individually and dba No Cow and No Cow LLC, and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 11, 2020
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by D’s Naturals, LLC, individually and dba No Cow and No Cow LLC

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: June 11, 2020

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 11, 2020
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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 11, 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
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Current President or CEO
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
6125 E Kemper Rd
Cincinnati, OH 45241

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
6125 E Kemper Rd
Cincinnati, OH 45241

On June 11, 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 11, 2020
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On June 11, 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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

June 11, 2020

Page 7

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

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

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

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

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

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

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

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

On June 11, 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 11, 2020, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



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

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, 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, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	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, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	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, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	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, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	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, Lake County 255 N. Forbes Street Lakeport, CA 95453	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	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² 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.

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 B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

June 18, 2020

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

D's Naturals, LLC, individually and dba No Cow and No Cow LLC



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 18, 2020
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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. **No Cow Protein Bar Raspberry Truffle - Lead**
2. **No Cow Protein Bar Vanilla Caramel - Lead**
3. **No Cow Protein Bar Birthday Cake - Lead**
4. **No Cow Protein Bar Chocolate Chip Cookie Dough - Lead**
5. **No Cow Protein Bar Chocolate Coconut - 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 June 18, 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 Violator violated Proposition 65 because it 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 Violator 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, looped initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to D's Naturals, LLC, individually and dba No Cow and No Cow LLC, and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 18, 2020
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by D’s Naturals, LLC, individually and dba No Cow and No Cow LLC

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: June 18, 2020

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 18, 2020
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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 18, 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
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Current President or CEO
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
6125 E Kemper Rd
Cincinnati, OH 45241

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
6125 E Kemper Rd
Cincinnati, OH 45241

On June 18, 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 18, 2020
Page 6

On June 18, 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

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

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

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

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

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

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

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

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

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

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

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

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 18, 2020
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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 June 18, 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 18, 2020, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 18, 2020
Page 8

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
Lakeport, CA 95453

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Sierra County
100 Courthouse Square, 2nd Floor
Downieville, CA 95936

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

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

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

District Attorney, Sutter County
463 2nd Street
Yuba City, CA 95991

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² 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.

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



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

July 16, 2020

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

D's Naturals, LLC, individually and dba No Cow and No Cow LLC



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

No Cow Protein Bar Peanut Butter Chocolate Chip - 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 this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 16, 2017, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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



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ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in dark ink, appearing to read "Matthew Maclear". The signature is written in a cursive style with a large, looped initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to D's Naturals, LLC, individually and dba No Cow and No Cow LLC, and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



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

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by D’s Naturals, LLC, individually and dba No Cow and No Cow LLC

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: July 16, 2020

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 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
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Current President or CEO
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
6125 E Kemper Rd
Cincinnati, OH 45241

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
6125 E Kemper Rd
Cincinnati, OH 45241

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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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

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

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

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

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

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

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

Jeff W. Reising, 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



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

July 16, 2020

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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, 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, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	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, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	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, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	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, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	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, Lake County 255 N. Forbes Street Lakeport, CA 95453	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	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² 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.

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



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

April 20, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

D's Naturals, LLC, individually and dba No Cow and No Cow LLC



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

No Cow Protein Bar Cookies 'N Cream – 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 this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 20, 2018, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 20, 2021
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to D's Naturals, LLC, individually and dba No Cow and No Cow LLC, and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 20, 2021
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by D's Naturals, LLC, individually and dba No Cow and No Cow LLC

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: April 20, 2021

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large initial "M".

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 20, 2021
Page 5

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 April 20, 2021, 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
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
3457 Ringsby Court, Unit 100A
Denver, CO 80216

Current President or CEO
D’s Naturals, LLC, individually and dba No Cow
and No Cow LLC
6125 E Kemper Rd
Cincinnati, OH 45241

Daniel Katz
(Registered Agent for D’s Naturals, LLC, individually and dba
No Cow and No Cow LLC)
6125 E Kemper Rd
Cincinnati, OH 45241

On April 20, 2021, 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 20, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 20, 2021
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Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

April 20, 2021

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

On April 20, 2021, 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 20, 2021, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 20, 2021
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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, Sutter County 463 2 nd Street Yuba City, CA 95991
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, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Orange County 300 N Flower St Santa Ana, CA 92703	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² 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.

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.