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14 Attorney for Defendants
15 Mimi's Rock Corp. and Mimi's Rock, Inc.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF ALAMEDA**

18 **ENVIRONMENTAL RESEARCH**
19 **CENTER, INC., a California non-profit**
20 **corporation**

21 **Plaintiff,**

22 **vs.**

23 **MIMI'S ROCK CORP., individually and**
24 **dba DR. TOBIAS; MIMI'S ROCK, INC.,**
25 **individually and dba DR. TOBIAS; and**
26 **DTI GmbH, individually and dba DR.**
27 **TOBIAS; and DOES 1-100**

28 **Defendants.**

CASE NO. RG21100320

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 et seq.

Action Filed: May 27, 2021

Trial Date: None set

1. INTRODUCTION

1.1 On May 27, 2021, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
2 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
3 against Mimi’s Rock Corp., individually and dba Dr. Tobias;¹ Mimi’s Rock, Inc., individually
4 and dba Dr. Tobias;² and DTI GmbH, individually and dba Dr. Tobias (collectively “Mimi’s
5 Rock”) and Does 1-100. Subsequently, on July 20, 2021, a First Amended Complaint was filed
6 (the operative Complaint, hereinafter referred to as “Complaint”). In this action, ERC alleges
7 that certain products manufactured, distributed, or sold by Mimi’s Rock contain lead, a
8 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
9 consumers to this chemical at a level requiring a Proposition 65 warning. These products
10 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
11 Products”) are: (1) Dr Tobias Adult Multivitamin, (2) Dr Tobias Colon 14 Day Cleanse, (3) Dr
12 Tobias Blood Sugar Support, (4) Dr Tobias Psyllium Daily, (5) Dr Tobias Prostate Support, (6)
13 Lennox by Dr Tobias Daily Essentials Mega Pack, and (7) Lennox by Dr Tobias Joint Support
14 Mega Pack. Mimi’s Rock denies these allegations.

15 **1.2** ERC and Mimi’s Rock are hereinafter referred to individually as a “Party” or
16 collectively as the “Parties.”

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

21 **1.4** Solely for purposes of this Consent Judgment, ERC contends that Mimi’s Rock
22 are business entities that employed ten or more persons at all times relevant to this action, and
23 qualify as “person[s] in the course of doing business” within the meaning of Proposition 65. ERC
24 further contends that Mimi’s Rock manufactures, distributes, and/or sells the Covered Products.
25 Mimi’s Rock disputes these contentions and seeks to resolve the dispute through settlement.

27 ¹ Mimi’s Rock Corp. contends that it was erroneously sued in this matter as “dba Dr.
28 Tobias.” Mimi’s Rock Corp. contends that it has never done business as “Dr. Tobias.”

² Mimi’s Rock, Inc. contends that it was erroneously sued in this matter as “dba Dr.
Tobias.” Mimi’s Rock, Inc. contends that it has never done business as “Dr. Tobias.”

1 ERC further contends that Mimi's Rock manufactures, distributes, and/or sells the Covered
2 Products. Mimi's Rock Corp. and Mimi's Rock, Inc. contend that they do not manufacture,
3 distribute, and/or sell the Covered Products, and seek to resolve this dispute through settlement.
4 Mimi's Rock Corp. and Mimi's Rock, Inc. further contend that they do not do business as "Dr.
5 Tobias."

6 **1.5** The Complaint is based on allegations contained in ERC's Notices of Violation
7 dated March 4, 2021 and April 30, 2021 that ERC contends, and solely for purposes of this
8 Consent Judgment Mimi's Rock stipulates, were properly served on the California Attorney
9 General, other public enforcers, and Mimi's Rock ("Notices"). True and correct copies of the
10 60-Day Notices dated March 4, 2021 and April 30, 2021 are attached hereto as *Exhibits A* and
11 *B* and incorporated herein by reference. More than 60 days have passed since the Notices were
12 served on the Attorney General, public enforcers, and Mimi's Rock and no designated
13 governmental entity has filed a Complaint against Mimi's Rock with regard to the Covered
14 Products or the alleged violations.

15 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
16 California consumers exposes them to lead without first receiving clear and reasonable
17 warnings from Mimi's Rock, which would be in violation of California Health and Safety
18 Code section 25249.6. Mimi's Rock denies all material allegations contained in the Notices and
19 Complaint.

20 **1.7** The Parties have entered into this Consent Judgment in order to settle,
21 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
22 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
23 or be construed as an admission by any of the Parties or by any of their respective officers,
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
25 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
26 issue of law, or violation of law.

27 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in

1 any current or future legal proceeding unrelated to these proceedings.

2 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
3 as a Judgment by this Court.

4 **2. JURISDICTION AND VENUE**

5 Solely for purposes of this Consent Judgment and any further court action that may
6 become necessary to enforce this Consent Judgment, and otherwise without prejudice to the
7 Parties' rights, remedies, arguments, or defenses in this matter or any prospective legal action, the
8 Parties stipulate solely for purposes of this Consent Judgment and enforcement thereof, and for no
9 other purpose, that this Court has subject matter jurisdiction over the allegations of violations
10 contained in the Complaint and personal jurisdiction over Mimi's Rock as to the acts alleged in
11 the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to
12 enter this Consent Judgment as a full and final resolution of all claims up through and including
13 the Effective Date that were or could have been asserted in this action based on the facts alleged in
14 the Notices and Complaint. Mimi's Rock so stipulates for the sole purpose of resolving this
15 dispute, and does so without prejudice to its right to dispute these matters or raise related defenses
16 in the course of any and all future disputes, other than any further court action that may become
17 necessary to enforce this Consent Judgment, and without waiver of any defenses or assertions in
18 this matter in the event this Court, for any reason, does not approve this Consent Judgment.

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

20 **3.1** Beginning on the Effective Date, Mimi's Rock shall be permanently enjoined
21 from manufacturing for sale in the State of California, "Distributing into the State of
22 California," or directly selling in the State of California, any Covered Product that exposes a
23 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
24 meets the warning requirements under Section 3.2.

25 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
26 of California" shall mean to directly ship a Covered Product into California for sale in
27 California or to sell a Covered Product to a distributor that Mimi's Rock knows or has reason
28 to know will sell the Covered Product in California.

1 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of lead per gram of product, multiplied by grams of product per serving of the
4 product (using the largest serving size appearing on the product label), multiplied by servings
5 of the product per day (using the largest number of recommended daily servings appearing on
6 the label), which equals micrograms of lead exposure per day. If the label contains no
7 recommended daily servings, then the number of recommended daily servings shall be one.

8 **3.2 Clear and Reasonable Warnings**

9 If Mimi’s Rock is required to provide a warning pursuant to Section 3.1, one of the
10 following warnings must be utilized (“Warning”):

11 **OPTION 1:**

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

15 Or

16 **OPTION 2:**

17 \triangle **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food

18 Mimi’s Rock shall use the phrase “cancer and” in the Warning if Mimi’s Rock has reason
19 to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
20 determined pursuant to the quality control methodology set forth in Section 3.4 or if Mimi’s Rock
21 has reason to believe that another Proposition 65 chemical is present which may require a cancer
22 warning. For the Option 2 Warning, the entire Warning must be in a type size no smaller than the
23 largest type size used for other consumer information on the product. In no case shall the
24 Warning appear in a type size smaller than 6-point type. Further, for Option 2, a symbol
25 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline
26 shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
27 word “**WARNING.**” Where the sign, label or shelf tag for the product is not printed using the
28 color yellow, the symbol may be printed in black and white.

1 The Warning shall be securely affixed to or printed upon the label of each Covered
2 Product and it must be set off from other surrounding information and enclosed in a box. In
3 addition, for any Covered Product sold over the internet, the Warning shall appear (1) prior to
4 checkout on the Covered Product's primary display page, and/or (2) as a pop-up when a
5 California zip code is input into the shipping instructions, and/or (3) on the checkout page
6 when a California delivery address is indicated for any purchase of any Covered Product.
7 Where a Warning subject to this section is provided solely on the checkout page, an asterisk or
8 other identifying method must be utilized to identify which products on the checkout page are
9 subject of the Warning. The Warning may be provided with a conspicuous hyperlink stating
10 "WARNING" in all capital and bold letters so long as the hyperlink goes directly to a page
11 prominently displaying the Warning without content that detracts from the Warning.

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

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

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

25 **3.3 Conforming Covered Products**

26 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
27 Level" is no greater than 0.5 micrograms of lead per day as determined by the exposure
28 methodology set forth in Section 3.1.2 and the quality control methodology described in Section

1 3.4, and for which Mimi's Rock does not have actual knowledge of other chemicals in the product
2 that violate Proposition 65's safe harbor thresholds.

3 **3.4 Testing and Quality Control Methodology**

4 **3.4.1** Beginning within one year of the Effective Date, Mimi's Rock shall
5 arrange for lead testing of the Covered Products at least once a year for a minimum of five
6 consecutive years by arranging for testing of three (3) randomly selected samples of each of
7 the Covered Products, in the form intended for sale to the end-user, which Mimi's Rock
8 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
9 California or "Distributing into the State of California." If tests conducted pursuant to this
10 Section demonstrate that no Warning is required for a Covered Product during each of five
11 consecutive years, then the testing requirements of this Section will no longer be required as to
12 that Covered Product. However, if during or after the five-year testing period, Mimi's Rock
13 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
14 Covered Products, Mimi's Rock shall test that Covered Product annually for at least four (4)
15 consecutive years after such change is made. .

16 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the
17 highest of the three (3) randomly selected samples of the Covered Products will be controlling.

18 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
19 laboratory method that complies with the performance and quality control factors appropriate
20 for the method used, including limit of detection and limit of quantification, sensitivity,
21 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
22 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005
23 mg/kg.

24 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
25 independent third party laboratory certified by the California Environmental Laboratory
26 Accreditation Program or an independent third-party laboratory that is registered with the
27 United States Food & Drug Administration.

28 **3.4.5** Nothing in this Consent Judgment shall limit Mimi's Rock's ability to

1 conduct, or require that others conduct, additional testing of the Covered Products, including
2 the raw materials used in their manufacture.

3 **3.4.6** Mimi's Rock shall retain all test results and related documentation for a
4 period of five years from the date of each test, and shall provide such test results to ERC within
5 thirty (30) days after receipt of ERC's written request.

6 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
7 any Covered Product for which Mimi's Rock is providing a Warning, continuously and
8 without interruption from the Effective Date, pursuant to Section 3.2 of this Consent Judgment.
9 In the event a Warning is provided after the Effective Date but Mimi's Rock thereafter ceases
10 to provide the Warning, the testing and reporting requirements of Section 3.4 of this Consent
11 Judgment shall apply beginning within one year after the date the Warning ceases to be
12 provided, unless Mimi's Rock can show to the satisfaction of ERC that the cessation in
13 providing the Warning was a temporary error that was resolved when discovered.

14 Additionally, the testing and reporting requirements set forth in Section 3.4 also do not apply
15 to any Covered Product that has been discontinued and is no longer being manufactured or
16 distributed for sale by Mimi's Rock; however, the testing and reporting requirements of
17 Section 3.4 shall resume in the event that production, manufacturing, distribution and/or sale
18 are thereafter resumed for such Covered Product.

19 **4. SETTLEMENT PAYMENT**

20 **4.1** In full satisfaction of all potential civil penalties, additional settlement
21 payments, attorney's fees, and costs, Mimi's Rock shall make a total payment of \$90,000.00
22 ("Total Settlement Amount") to ERC in five periodic payments (the "Periodic Payments")
23 according to the following payment schedule ("Due Dates"):

- 24 • Payment 1 -- \$30,000.00 on or before May 1, 2022;
- 25 • Payment 2 -- \$15,000.00 on or before June 1, 2022;
- 26 • Payment 3 -- \$15,000.00 on or before July 1, 2022;
- 27 • Payment 4 -- \$15,000.00 on or before August 1, 2022;
- 28 • Payment 5 -- \$15,000.00 on or before September 1, 2022.

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

4 **4.2** \$29,300.00 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$21,975.00) of the civil penalty to
6 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code section 25249.12(c). ERC will retain the remaining 25% (\$7,325.00) of the civil penalty.

9 **4.3** \$5,245.91 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 **4.4** \$21,960.34 shall be distributed to ERC as an Additional Settlement Payment
12 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
13 and 3204. ERC will utilize the ASP for activities that address the same public harm as
14 allegedly caused by Defendants in this matter. These activities are detailed
15 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
16 chemicals in dietary supplement products in California. ERC's activities have had, and will
17 continue to have, a direct and primary effect within the State of California because California
18 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
19 supplements and/or by providing clear and reasonable warnings to California consumers prior
20 to ingestion of the products.

21 Based on a review of past years' actual budgets, ERC is providing the following list of
22 activities ERC engages in to protect California consumers through Proposition 65 citizen
23 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
24 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
25 supplement products that may contain lead and are sold to California consumers. This work
26 includes continued monitoring and enforcement of past consent judgments and settlements to
27 ensure companies are in compliance with their obligations thereunder, with a specific focus on
28 those judgments and settlements concerning lead. This work also includes investigation of new

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

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

18 **4.5** \$19,750.00 shall be distributed to Michael Freund as reimbursement of ERC's
19 attorney's fees, while \$13,743.75 shall be distributed to ERC for its in-house legal fees.
20 Except as explicitly provided herein, each Party shall bear its own fees and costs.

21 **4.6** In the event that Mimi's Rock fails to remit, in full, any of the Periodic
22 Payments owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable
23 Due Date, Mimi's Rock shall be deemed to be in material breach of its obligations under this
24 Consent Judgment. ERC shall provide written notice of the delinquency to Mimi's Rock via
25 electronic mail. If Mimi's Rock fails to deliver the delinquent payment within five (5) days
26 from the written notice, the Total Settlement Amount, less any amounts previously paid
27 pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the
28 statutory judgment interest rate provided in the California Code of Civil Procedure section

1 685.010. Additionally, Mimi's Rock agrees to pay ERC's reasonable attorney's fees and
2 costs for any efforts to collect the payment due under this Consent Judgment.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

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

8 **5.2** If Mimi's Rock seeks to modify this Consent Judgment under Section 5.1, then
9 Mimi's Rock must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
10 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
11 must provide written notice to Mimi's Rock within thirty (30) days of receiving the Notice of
12 Intent. If ERC notifies Mimi's Rock in a timely manner of ERC's intent to meet and confer,
13 then the Parties shall meet and confer in good faith as required in this Section. The Parties
14 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
15 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
16 modification, ERC shall provide to Mimi's Rock a written basis for its position. The Parties
17 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
18 remaining disputes. Should it become necessary, the Parties may agree in writing to different
19 deadlines for the meet-and-confer period.

20 **5.3** In the event that Mimi's Rock initiates or otherwise requests a modification
21 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
22 modification of the Consent Judgment, Mimi's Rock shall reimburse ERC its costs and
23 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
24 arguing the motion or application.

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

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

1 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
2 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
3 inform Mimi's Rock in a reasonably prompt manner of its test results, including information
4 sufficient to permit Mimi's Rock to identify the Covered Products at issue. Mimi's Rock shall,
5 within thirty (30) days following such notice, provide ERC with testing information, if
6 requested pursuant to this Section 6.2, from an independent third-party laboratory meeting the
7 requirements of Sections 3.4.3 and 3.4.4, demonstrating Mimi's Rock's compliance with the
8 Consent Judgment, or shall otherwise provide information demonstrating compliance with the
9 Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any
10 further legal action.

11 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

19 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
20 on behalf of itself and in the public interest, and Mimi's Rock and its respective officers,
21 directors, shareholders, employees, agents, parent companies, affiliates, subsidiaries, divisions,
22 suppliers, franchisees, licensees, customers (not including private label customers of Mimi's
23 Rock), distributors, wholesalers, retailers, and all other upstream and downstream entities in
24 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of
25 any of them (collectively, "Released Parties").

26 **8.2** ERC, acting in the public interest, releases the Released Parties from any
27 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
28 to lead from the Covered Products as set forth in the Notices of Violation. ERC, on behalf of

1 itself only, hereby fully releases and discharges the Released Parties from any and all claims,
2 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
3 expenses asserted, or that could have been asserted from the handling, use, or consumption of
4 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
5 regulations arising from the failure to provide Proposition 65 warnings on the Covered
6 Products regarding lead up to and including the Effective Date.

7 **8.3** ERC on its own behalf only, and Mimi's Rock on its own behalf only,
8 further waive and release any and all claims they may have against each other for all actions or
9 statements made or undertaken in the course of seeking or opposing enforcement of
10 Proposition 65 in connection with the Notices and Complaint up through and including the
11 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
12 right to seek to enforce the terms of this Consent Judgment.

13 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
14 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
15 discovered. ERC on behalf of itself only, and Mimi's Rock on behalf of itself only,
16 acknowledge that this Consent Judgment is expressly intended to cover and include all such
17 claims up through and including the Effective Date, including all rights of action therefore.
18 ERC and Mimi's Rock acknowledge that the claims released in Sections 8.2 and 8.3 above
19 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
20 any such unknown claims. California Civil Code section 1542 reads as follows:

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

25 ERC on behalf of itself only, and Mimi's Rock on behalf of itself only, acknowledge and
26 understand the significance and consequences of this specific waiver of California Civil Code
27 section 1542.

28 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to

1 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
2 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

3 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
4 environmental exposures arising under Proposition 65, nor shall it apply to any of Mimi's
5 Rock's products other than the Covered Products.

6 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

11 The terms and conditions of this Consent Judgment shall be governed by and construed in
12 accordance with the laws of the State of California. In the event that Proposition 65 is repealed,
13 preempted, or is otherwise rendered completely inapplicable by reason of law as to the Covered
14 Products, then Mimi's Rock may provide ERC with written notice of any asserted change in the
15 law, and shall have no further injunctive obligations pursuant to this Consent Judgment with
16 respect to, and to the extent that, the Covered Products are so affected. Nothing in this Consent
17 Judgment shall be interpreted to relieve Mimi's Rock from its obligation to comply with any
18 pertinent and applicable state or federal law or regulation.

19 **11. PROVISION OF NOTICE**

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

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

24 Chris Heptinstall, Executive Director, Environmental Research Center
25 3111 Camino Del Rio North, Suite 400
26 San Diego, CA 92108
27 Ph: (619) 500-3090
28 Email: chris.heptinstall@erc501c3.org

///

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1 With a copy to:

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

8 **FOR MIMI'S ROCK:**

9 David Kohler, Chief Executive Officer, Mimi's Rock Corp.
10 202-610 Chartwell Road
11 Oakville, ON L6J 4A5
12 Email: dkohler@mimisrock.com

13 With a copy to:

14 Landon D. Bailey
15 Bailey PLC
16 641 Fulton Avenue, Suite 200
17 Sacramento, CA 95825
18 Telephone: (916) 713-2580
19 Email: landon@baileyplc.com

20 **12. COURT APPROVAL**

21 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
22 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
23 Consent Judgment.

24 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
25 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
26 prior to the hearing on the motion.

27 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
28 void and have no force or effect.

13. EXECUTION AND COUNTERPARTS

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

///

1 **14. DRAFTING**

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

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

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

15 **16. ENFORCEMENT**

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

24 **17. ENTIRE AGREEMENT, AUTHORIZATION**

25 **17.1** This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, including any and
27 all prior discussions, negotiations, commitments, and understandings related thereto. No
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

5 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
6 **CONSENT JUDGMENT**

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

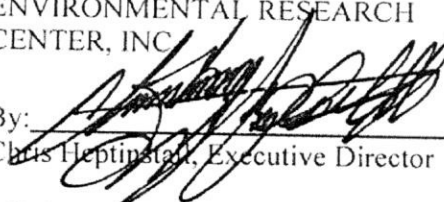
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
12 been diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

15 **IT IS SO STIPULATED:**


16
17 Dated: 1/27/, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

18
19 By: 
20 Chris Heptinstall, Executive Director

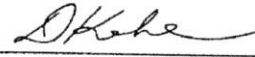
21 Dated: January 25, 2022

MIMI'S ROCK CORP.

22 
23 By: David Kohler
24 Its: CEO

25 Dated: January 25, 2022

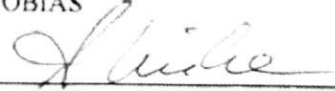
MIMI'S ROCK, INC.

26 
27 By: David Kohler
28 Its: CEO

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Dated: January 25, 2022

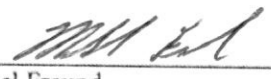
DTI GmbH, individually and dba DR.
TOBIAS


By: Axel Linke
Its: Managing Director

APPROVED AS TO FORM:

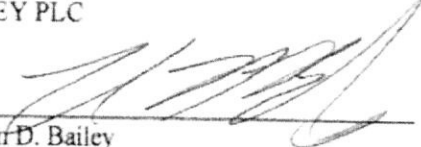
Dated: 1/26/, 2022

MICHAEL FREUND & ASSOCIATES


Michael Freund
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH
CENTER, INC.

Dated: 1/18, 2022

BAILEY PLC


By: Landon D. Bailey
Attorney for Mimi's Rock Corp. and Mimi's
Rock, Inc.

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: _____, 2022

Judge of the Superior Court

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EXHIBIT A

Michael Freund & Associates

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

Michael Freund, Esq.

March 4, 2021

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Mimi's Rock Corp., individually and dba Dr. Tobias
Mimi's Rock, Inc., individually and dba Dr. Tobias
DTI GmbH, individually and dba Dr. Tobias

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. Dr Tobias Adult Multivitamin- Lead**
- 2. Dr Tobias Colon 14 Day Cleanse - Lead**
- 3. Dr Tobias Blood Sugar Support - Lead**
- 4. Dr Tobias Psyllium Daily - Lead**
- 5. Dr Tobias Prostate Support - Lead**

March 4, 2021

Page 2

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 4, 2018, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Mimi's Rock Corp., individually and dba Dr. Tobias; Mimi's Rock, Inc., individually and dba Dr. Tobias; and DTI GmbH, individually and dba Dr. Tobias)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Mimi's Rock Corp., individually and dba Dr. Tobias; Mimi's Rock, Inc., individually and dba Dr. Tobias; and DTI GmbH, individually and dba Dr. Tobias

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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



Dated: March 4, 2021

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 4, 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
Mimi's Rock Corp., individually and dba
Dr. Tobias
202-610 Chartwell Rd
Oakville, ON L6J 4A5
Canada

Current President or CEO
DTI GmbH, individually and dba Dr. Tobias
Rathausplatz 22
22926, Ahrensburg, Schleswig-Holstein
Germany

Current President or CEO
Mimi's Rock, Inc., individually
and dba Dr. Tobias
202-610 Chartwell Rd
Oakville, ON L6J 4A5
Canada

On March 4, 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 March 4, 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:

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

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

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

March 4, 2021

Page 5

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

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

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

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

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

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

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

Clifford H. Newell, District Attorney
Nevada County
201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Morgan Briggs Gire, District Attorney
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
Plumas County
520 Main St
Quincy, CA 95971
davidhollister@countyofplumas.com

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

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

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

Alethea Sargent, Assistant District Attorney
White Collar Division
San Francisco District Attorney's Office
350 Rhode Island Street
North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

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

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

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

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

March 4, 2021

Page 6

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 March 4, 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 March 4, 2021, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

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

March 4, 2021

Page 7

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
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, Sutter County 463 2 nd Street Yuba City, CA 95991
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, Tehama County Post Office Box 519 Red Bluff, CA 96080
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, Trinity County Post Office Box 310 Weaverville, CA 96093
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, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Orange County 300 N Flower St Santa Ana, CA 92703	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
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	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	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, 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		

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.

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EXHIBIT B

Michael Freund & Associates

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

Michael Freund, Esq.

April 30, 2021

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Mimi’s Rock Corp., individually and dba Dr. Tobias
Mimi’s Rock, Inc., individually and dba Dr. Tobias
DTI GmbH, individually and dba Dr. Tobias

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. Lennox by Dr Tobias Daily Essentials Mega Pack - Lead**
- 2. Lennox by Dr Tobias Joint Support Mega Pack – 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.

April 30, 2021

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 30, 2018, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Mimi's Rock Corp., individually and dba Dr. Tobias; Mimi's Rock, Inc., individually and dba Dr. Tobias; and DTI GmbH, individually and dba Dr. Tobias)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Mimi’s Rock Corp., individually and dba Dr. Tobias; Mimi’s Rock, Inc., individually and dba Dr. Tobias; and DTI GmbH, individually and dba Dr. Tobias

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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



Dated: April 30, 2021

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On April 30, 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
Mimi's Rock Corp., individually and dba
Dr. Tobias
202-610 Chartwell Rd
Oakville, ON L6J 4A5
Canada

Current President or CEO
DTI GmbH, individually and dba Dr. Tobias
Rathausplatz 22
22926, Ahrensburg, Schleswig-Holstein
Germany

Current President or CEO
Mimi's Rock, Inc., individually
and dba Dr. Tobias
202-610 Chartwell Rd
Oakville, ON L6J 4A5
Canada

On April 30, 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 30, 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:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDPprop65@acgov.org

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

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

April 30, 2021

Page 5

Stacey Grassini, Deputy District Attorney
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Independence, CA 93526
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Michelle Latimer, Program Coordinator
Lassen County
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mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney
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P.O. Box 730
Mariposa, CA 95338
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Kimberly Lewis, District Attorney
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Allison Haley, District Attorney
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3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

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201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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davidhollister@countyofplumas.com

Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
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San Diego, CA 92101
SanDiegoDAProp65@sdca.org

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

Alethea Sargent, Assistant District Attorney
White Collar Division
San Francisco District Attorney's Office
350 Rhode Island Street
North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
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San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

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

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
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San Luis Obispo, CA 93408
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Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

April 30, 2021

Page 6

Christopher Dalbey, Deputy District Attorney
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DAProp65@co.santa-barbara.ca.us

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San Jose, CA 95110
EPU@da.sccgov.org

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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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Sonoma, CA 95403
jbarnes@sonoma-county.org

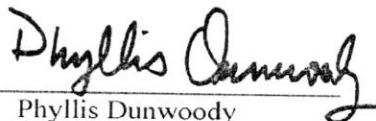
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Gregory D. Totten, District Attorney
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800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

On April 30, 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 30, 2021, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
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, Sutter County 463 2 nd Street Yuba City, CA 95991
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, Tehama County Post Office Box 519 Red Bluff, CA 96080
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, Trinity County Post Office Box 310 Weaverville, CA 96093
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, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Orange County 300 N Flower St Santa Ana, CA 92703	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
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	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, 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 Post Office Box 457 100 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, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	

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.