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22 ADVANCED NUTRITION INC, individually and dba ADVANCED  
23 NUTRITION BY ZAHLER

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **COUNTY OF ALAMEDA**

26 **ENVIRONMENTAL RESEARCH CENTER,**  
27 **INC., a California non-profit corporation**

28 **Plaintiff,**

**vs.**

**ADVANCED NUTRITION INC, individually**  
**and dba ADVANCED NUTRITION BY**  
**ZAHLER; and DOES 1-100**

**Defendants.**

**CASE NO. 21CV003837**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et*  
*seq.*

Action Filed: December 9, 2021  
Trial Date: None set

1     **1. INTRODUCTION**

2           **1.1**     On December 9, 2021, Plaintiff Environmental Research Center, Inc. (“ERC”),  
3 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
5 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
6 (“Proposition 65”), against Advanced Nutrition Inc, individually and dba Advanced Nutrition  
7 by Zahler (“Advanced Nutrition by Zahler”) and Does 1-100. In this action, ERC alleges that a  
8 number of products manufactured, distributed, or sold by Advanced Nutrition by Zahler  
9 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin,  
10 and expose consumers to this chemical at a level requiring a Proposition 65 warning. These  
11 products (referred to hereinafter individually as a “Covered Product” or collectively as  
12 “Covered Products”) are: (1) Advanced Nutrition by Zahler Lactivate Advanced Lactation  
13 Support, (2) Advanced Nutrition by Zahler Multi Vitamin Energy, (3) Advanced Nutrition by  
14 Zahler Multi Vitamin Digestion, (4) Advanced Nutrition by Zahler StressMaster, and (5)  
15 Advanced Nutrition by Zahler Revolution Potent Urinary Tract Formula.

16           **1.2**     ERC and Advanced Nutrition by Zahler are hereinafter referred to individually  
17 as a “Party” or collectively as the “Parties.”

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

22           **1.4**     For purposes of this Consent Judgment, the Parties agree that Advanced Nutrition  
23 by Zahler is a business entity that has employed ten or more persons at all times relevant to this  
24 action, and qualifies as a “person in the course of doing business” within the meaning of  
25 Proposition 65. Advanced Nutrition by Zahler manufactures, distributes, and/or sells the Covered  
26 Products.

27           **1.5**     The Complaint is based on allegations contained in ERC’s Notices of Violation  
28 dated July 22, 2021 and August 12, 2021 that were served on the California Attorney General,

1 other public enforcers, and Advanced Nutrition by Zahler (“Notices”). True and correct copies  
2 of the 60-Day Notices dated July 22, 2021 and August 12, 2021 are attached hereto as *Exhibits*  
3 *A* and *B* and incorporated herein by reference. More than 60 days have passed since the  
4 Notices were served on the Attorney General, public enforcers, and Advanced Nutrition by  
5 Zahler and no designated governmental entity has filed a Complaint against Advanced  
6 Nutrition by Zahler with regard to the Covered Products or the alleged violations.

7 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by  
8 California consumers exposes them to lead without first receiving clear and reasonable  
9 warnings from Advanced Nutrition by Zahler, which is in violation of California Health and  
10 Safety Code section 25249.6. Advanced Nutrition by Zahler denies all material factual and legal  
11 allegations contained in the Notices and Complaint, and maintains that all of the products it has  
12 manufactured, imported, sold, and/or distributed for sale in California, including the Covered  
13 Products, have been, and are, in compliance with all laws.

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

23 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
24 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
25 any current or future legal proceeding unrelated to these proceedings.

26 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered  
27 as a Judgment by this Court.

28 ///

1       **2.    JURISDICTION AND VENUE**

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

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

10          **3.1**    Beginning on the Effective Date, Advanced Nutrition by Zahler shall be  
11 permanently enjoined from manufacturing for sale in the State of California, “Distributing into  
12 the State of California,” or directly selling in the State of California, any Covered Product that  
13 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per  
14 day unless it meets the warning requirements under Section 3.2. This requirement shall not  
15 apply to Covered Products that are already in the stream of commerce as of the Effective Date,  
16 which Covered Products are expressly subject to the releases provided in Section 8. For  
17 purposes of this Consent Judgment, the term “in the stream of commerce” means that  
18 manufactured Covered Products are put into final packaging for consumer sale and (a) have  
19 been Distributed into the State of California or sold in the State of California by Advanced  
20 Nutrition by Zahler or (b) are no longer in the possession of or under the control of Advanced  
21 Nutrition by Zahler.

22           **3.1.1**   As used in this Consent Judgment, the term “Distribut[ing][ed] into the  
23 State of California” shall mean to directly ship a Covered Product into California for sale in  
24 California or to sell a Covered Product to a distributor that Advanced Nutrition by Zahler  
25 knows or has reason to know will sell the Covered Product in California.

26           **3.1.2**   For purposes of this Consent Judgment, the “Daily Lead Exposure  
27 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
28 micrograms of lead per gram of product, multiplied by grams of product per serving of the

1 product (using the largest serving size appearing on the product label), multiplied by servings  
2 of the product per day (using the largest number of recommended daily servings appearing on  
3 the label), which equals micrograms of lead exposure per day. If the label contains no  
4 recommended daily servings, then the number of recommended daily servings shall be one.

### 5 **3.2 Clear and Reasonable Warnings**

6 If Advanced Nutrition by Zahler is required to provide a warning pursuant to Section 3.1,  
7 the following warning must be utilized (“Warning”):

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

11 Advanced Nutrition by Zahler shall use the phrase “cancer and” in the Warning if  
12 Advanced Nutrition by Zahler has reason to believe that the “Daily Lead Exposure Level” is  
13 greater than 15 micrograms of lead as determined pursuant to the quality control methodology set  
14 forth in Section 3.4 or if Advanced Nutrition by Zahler has reason to believe that another  
15 Proposition 65 chemical is present which may require a cancer warning.

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

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

Advanced Nutrition by Zahler must display the above Warning with such conspicuousness,

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

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

7 **3.2.1** Advanced Nutrition by Zahler’s responsibilities to provide the Warning  
8 described in Section 3.2 shall continue (a) so long as Proposition 65 has not been repealed in its  
9 entirety or (b) until a warning is no longer required based on one or more of the following  
10 grounds: (1) the amendment of either Proposition 65 or its implementing regulations through  
11 final rulemaking by OEHHA removes the warning obligation as such obligation relates to the  
12 Covered Products; or (2) Proposition 65 is preempted by federal law in a final and binding  
13 ruling applicable to the Covered Products. If Advanced Nutrition by Zahler contends that it is no  
14 longer responsible to provide the Warning described by Section 3.2. because of a reason  
15 outlined in this Section 3.2.1, it must move the Court pursuant to Section 5 for a determination  
16 that the Warning is no longer required.

17 **3.3 Conforming Covered Products**

18 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
19 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure  
20 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
21 3.4, and that is not known by Advanced Nutrition by Zahler to contain other chemicals that violate  
22 Proposition 65’s safe harbor thresholds.

23 **3.4 Testing and Quality Control Methodology**

24 **3.4.1** Beginning within one year of the Effective Date, Advanced Nutrition by  
25 Zahler shall arrange for lead testing of the Covered Products at least once a year for a  
26 minimum of five consecutive years by arranging for testing of three (3) randomly selected  
27 samples of each of the Covered Products, in the form intended for sale to the end-user, which  
28 Advanced Nutrition by Zahler is manufacturing for sale in California, “Distributing into the

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

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

11 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
12 laboratory method that complies with the performance and quality control factors appropriate  
13 for the method used, including limit of detection and limit of quantification, sensitivity,  
14 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
15 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
16 mg/kg.

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

21 **3.4.5** Nothing in this Consent Judgment shall limit Advanced Nutrition by  
22 Zahler’s ability to conduct, or require that others conduct, additional testing of the Covered  
23 Products, including the raw materials used in their manufacture.

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

28 **3.4.7** The testing requirements of Section 3.4 do not apply to any Covered

1 Product for which Advanced Nutrition by Zahler is providing a Warning, continuously and  
2 without interruption from the Effective Date, pursuant to Section 3.2 of this Agreement. In the  
3 event a Warning is provided after the Effective Date but Advanced Nutrition by Zahler  
4 thereafter ceases to provide the Warning, the testing and reporting requirements of Section 3.4  
5 of this Agreement shall apply beginning within one year after the date the Warning ceases to  
6 be provided, unless Advanced Nutrition by Zahler can show to the satisfaction of ERC that the  
7 cessation in providing the Warning was a temporary error that was resolved when discovered.  
8 Additionally, in the event Advanced Nutrition by Zahler elects to not sell a Covered Product in  
9 California, and, with respect to that Covered Product, is neither “Distributing into the State of  
10 California” nor directly selling in the State of California, then no testing of said Covered  
11 Product is required; however, compliance with the testing requirements of Section 3.4 shall  
12 begin or resume immediately after Advanced Nutrition by Zahler elects to sell or distribute the  
13 Covered Product in California.

#### 14 **4. SETTLEMENT PAYMENT**

15 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
16 payments, attorney’s fees, and costs, Advanced Nutrition by Zahler shall make a total payment  
17 of \$20,000.00 (“Total Settlement Amount”) to ERC within 5 days after the Effective Date  
18 (“Due Date”). Advanced Nutrition by Zahler shall make this payment by wire transfer to  
19 ERC’s account, for which ERC will give Advanced Nutrition by Zahler the necessary account  
20 information. The Total Settlement Amount shall be apportioned as follows:

21 **4.2** \$3,200.00 shall be considered a civil penalty pursuant to California Health and  
22 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$2,400.00) of the civil penalty to the  
23 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
24 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
25 Code section 25249.12(c). ERC will retain the remaining 25% (\$800.00) of the civil penalty.

26 **4.3** \$4,899.72 shall be distributed to ERC as reimbursement to ERC for reasonable  
27 costs incurred in bringing this action.

28 **4.4** \$11,900.28 shall be distributed to ERC for its in-house legal fees. Except as



1 explicitly provided herein, each Party shall bear its own fees and costs.

2           **4.5**     In the event that Advanced Nutrition by Zahler fails to remit the Total  
3 Settlement Amount owed under Section 4 of this Consent Judgment on or before the Due Date,  
4 Advanced Nutrition by Zahler shall be deemed to be in material breach of its obligations under  
5 this Consent Judgment. ERC shall provide written notice of the delinquency to Advanced  
6 Nutrition by Zahler via electronic mail. If Advanced Nutrition by Zahler fails to deliver the  
7 Total Settlement Amount within five (5) days after the written notice, the Total Settlement  
8 Amount shall accrue interest at the statutory judgment interest rate provided in the California  
9 Code of Civil Procedure section 685.010. Additionally, Advanced Nutrition by Zahler agrees  
10 to pay ERC’s reasonable attorney’s fees and costs for any efforts to collect the payment due  
11 under this Consent Judgment.

12     **5.     MODIFICATION OF CONSENT JUDGMENT**

13           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
14 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
15 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
16 modified consent judgment.

17           **5.2**     If Advanced Nutrition by Zahler seeks to modify this Consent Judgment under  
18 Section 5.1, then Advanced Nutrition by Zahler must provide written notice to ERC of its intent  
19 (“Notice of Intent”). If ERC seeks to meet and confer regarding the proposed modification in  
20 the Notice of Intent, then ERC must provide written notice to Advanced Nutrition by Zahler  
21 within thirty (30) days after receiving the Notice of Intent. If ERC notifies Advanced Nutrition  
22 by Zahler in a timely manner of ERC’s intent to meet and confer, then the Parties shall meet  
23 and confer in good faith as required in this Section. The Parties shall meet in person or via  
24 telephone within thirty (30) days after ERC’s notification of its intent to meet and confer.  
25 Within thirty (30) days after such meeting, if ERC disputes the proposed modification, ERC  
26 shall provide to Advanced Nutrition by Zahler a written basis for its position. The Parties shall  
27 continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
28 remaining disputes. Should it become necessary, the Parties may agree in writing to different

1 deadlines for the meet-and-confer period.

2           **5.3**     In the event that Advanced Nutrition by Zahler initiates or otherwise requests a  
3 modification under Section 5.1, and the meet and confer process leads to a joint motion or  
4 application for a modification of the Consent Judgment, Advanced Nutrition by Zahler shall  
5 reimburse ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-  
6 confer process and filing and arguing the motion or application.

7       **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
8           **JUDGMENT**

9           **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or  
10 terminate this Consent Judgment.

11           **6.2**     If ERC alleges that any Covered Product fails to qualify as a Conforming  
12 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
13 inform Advanced Nutrition by Zahler in a reasonably prompt manner of its test results,  
14 including information sufficient to permit Advanced Nutrition by Zahler to identify the Covered  
15 Products at issue. Advanced Nutrition by Zahler shall, within thirty (30) days following such  
16 notice, provide ERC with testing information, from an independent third-party laboratory  
17 meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Advanced Nutrition by  
18 Zahler’s compliance with the Consent Judgment. The Parties shall first attempt to resolve the  
19 matter prior to ERC taking any further legal action.

20       **7.     APPLICATION OF CONSENT JUDGMENT**

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

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

28           **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC,

1 on behalf of itself and in the public interest, and Advanced Nutrition by Zahler and its  
2 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
3 divisions, suppliers, franchisees, licensees, customers (not including private label customers of  
4 Advanced Nutrition by Zahler), distributors, wholesalers, retailers, and all other upstream and  
5 downstream entities in the distribution chain of any Covered Product, and the predecessors,  
6 successors, and assigns of any of them (collectively, “Released Parties”).

7 **8.2** ERC, acting in the public interest, releases the Released Parties from any  
8 and all claims for violations of Proposition 65 up through the Effective Date based on exposure  
9 to lead from the Covered Products as set forth in the Notices of Violation. Subject to any future  
10 enforcement undertaken pursuant to Section 16, this Consent Judgment is a full, final, and  
11 binding resolution of all claims that were or could have been asserted against the Released  
12 Parties relating to failure to provide warnings pursuant to Proposition 65 with respect to the  
13 Covered Products. ERC, on behalf of itself only, hereby fully releases and discharges the  
14 Released Parties from any and all claims, actions, causes of action, obligations, suits, demands,  
15 liabilities, damages, penalties, fees, costs, expenses, attorney’s fees, losses, and demands of  
16 every nature, character, and kind, whether known or unknown, suspected or unsuspected,  
17 arising out of or relating to the Covered Products as to any violation of Proposition 65 or its  
18 implementing regulations arising from the failure to provide Proposition 65 warnings on the  
19 Covered products regarding lead up to and including the Effective Date.

20 **8.3** ERC on its own behalf only, and Advanced Nutrition by Zahler on its own  
21 behalf only, further waive and release any and all claims they may have against each other for  
22 all actions or statements made or undertaken in the course of seeking or opposing enforcement  
23 of Proposition 65 in connection with the Notices and Complaint up through and including the  
24 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s  
25 right to seek to enforce the terms of this Consent Judgment.

26 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
27 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
28 discovered. ERC on behalf of itself only, and Advanced Nutrition by Zahler on behalf of itself

1 only, acknowledge that this Consent Judgment is expressly intended to cover and include all  
2 such claims up through and including the Effective Date, including all rights of action  
3 therefore. ERC and Advanced Nutrition by Zahler acknowledge that the claims released in  
4 Sections 8.2 and 8.3 above may include unknown claims, and nevertheless waive California  
5 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542  
6 reads as follows:

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

13 ERC on behalf of itself only, and Advanced Nutrition by Zahler on behalf of itself only,  
14 acknowledge and understand the significance and consequences of this specific waiver of  
15 California Civil Code section 1542.

16           **8.5**     Compliance with the terms of this Consent Judgment shall be deemed to  
17           constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
18           exposures to lead in the Covered Products as set forth in the Notices and Complaint.

19           **8.6**     Nothing in this Consent Judgment is intended to apply or shall apply to any of  
20           Advanced Nutrition by Zahler's products other than the Covered Products.

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

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

## 25           **10. GOVERNING LAW**

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

## 28           **11. PROVISION OF NOTICE**

          All notices required to be given to either Party to this Consent Judgment by the other shall  
          be in writing and sent to the following agents listed below via first-class mail or via electronic

1 mail where required. Courtesy copies via email may also be sent.

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

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

8 With a copy to:

9 Charles W. Poss Environmental Research Center, Inc.  
10 3111 Camino Del Rio North, Suite 400  
11 San Diego, CA 92108  
12 Ph: (619) 500-3090  
13 Email: [charles.poss@erc501c3.org](mailto:charles.poss@erc501c3.org)

14 **FOR ADVANCED NUTRITION INC, individually and dba ADVANCED NUTRITION  
15 BY ZAHLER:**

16 Mendel Monheit  
17 Advanced Nutrition by Zahler  
18 50 Lawrence Ave  
19 Brooklyn, NY 11230  
20 Ph: (212) 444-9936 x 212  
21 Email: [mendel@zahlers.com](mailto:mendel@zahlers.com)

22 With a copy to:

23 Ashley Simonsen  
24 Covington & Burling LLP  
25 1999 Avenue of the Stars  
26 Los Angeles, CA 90067  
27 Ph: (424) 332-4782  
28 Email: [asimonsen@cov.com](mailto:asimonsen@cov.com)

and

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Washington, DC 200001-4956  
Ph: (202) 662-5568  
Email: [srosenbaum@cov.com](mailto:srosenbaum@cov.com)

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1       **12. COURT APPROVAL**

2           **12.1** ERC agrees to comply with the reporting form requirements referenced in  
3 Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to  
4 Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial  
5 approval of the settlement, which motion ERC shall draft and file. In furtherance of obtaining  
6 such approval, the Parties agree to mutually employ their best efforts, including those of their  
7 counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of  
8 their settlement in a timely manner. For purposes of this Section, “best efforts” shall include, at  
9 a minimum, supporting the motion for approval, responding to any objection that any third-  
10 party may make, and appearing at the hearing before the Court if so requested.

11           **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
12 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
13 prior to the hearing on the motion.

14           **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
15 void and have no force or effect.

16       **13. EXECUTION AND COUNTERPARTS**

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

20       **14. DRAFTING**

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

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

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

6 **16. ENFORCEMENT**

7 ERC may, by motion or order to show cause before the Superior Court of Alameda  
8 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
9 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
10 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
11 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
12 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent  
13 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are  
14 provided by law for failure to comply with Proposition 65 or other laws.

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

16 **17.1** This Consent Judgment contains the sole and entire agreement and  
17 understanding of the Parties with respect to the entire subject matter herein, including any and  
18 all prior discussions, negotiations, commitments, and understandings related thereto. No  
19 representations, oral or otherwise, express or implied, other than those contained herein have  
20 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
21 herein, shall be deemed to exist or to bind any Party.

22 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
23 authorized by the Party he or she represents to stipulate to this Consent Judgment.

24 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
25 **CONSENT JUDGMENT**

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

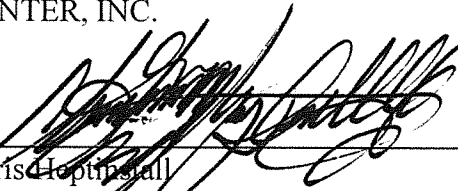
1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
2 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
3 been diligently prosecuted, and that the public interest is served by such settlement; and

4 (2) Make the findings pursuant to California Health and Safety Code section  
5 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

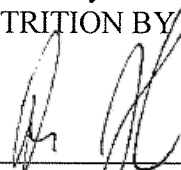
7 Dated: 12/10/, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC.

8  
9  
10 By:   
11 Chris Hopinstall  
Executive Director

12 Dated: Dec. 16, 2021

13 ADVANCED NUTRITION INC,  
14 individually and dba ADVANCED  
15 NUTRITION BY ZAHLER

16   
17 By: Ben Zahler  
18 Its: Chief Executive Officer  
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**APPROVED AS TO FORM:**

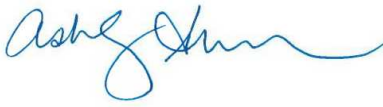
Dated: December 13, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
\_\_\_\_\_  
Charles W. Poss  
In-House Counsel

Dated: December 16, 2021

COVINGTON & BURLING LLP

By:   
\_\_\_\_\_  
Ashley Simonsen  
Attorney for Advanced Nutrition Inc,  
individually and dba Advanced Nutrition  
by Zahler

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2021 \_\_\_\_\_  
Judge of the Superior Court

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# **EXHIBIT A**



## Environmental Research Center

3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
619-500-3090

July 22, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 attached with the copy of this letter served to the alleged Violator identified below.

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

**Advanced Nutrition Inc, individually and dba Advanced Nutrition by Zahler**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

**Advanced Nutrition by Zahler Lactivate Advanced Lactation Support - 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.

July 22, 2021

Page 2

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least July 22, 2018, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Advanced Nutrition Inc, individually and dba Advanced Nutrition by Zahler)

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 Advanced Nutrition Inc, individually and dba Advanced Nutrition by Zahler**

I, Chris Heptinstall, declare:

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

2. I am the Executive Director for the noticing party.

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

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

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



Dated: July 22, 2021

---

Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On July 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Advanced Nutrition Inc, individually  
and dba Advanced Nutrition by Zahler  
50 Lawrence Ave  
Brooklyn, NY 11230

On July 22, 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On July 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

July 22, 2021

Page 5

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

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

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.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, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

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

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

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



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

July 22, 2021

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

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

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

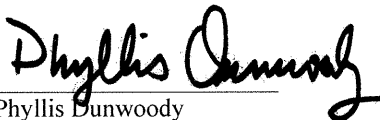
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On July 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on July 22, 2021, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Orange  
County  
300 N Flower St  
Santa Ana, CA 92703

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

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

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

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

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
Downieville, CA 95936

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

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

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

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

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

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

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

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

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

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

## APPENDIX A

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

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

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

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

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

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

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

---

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

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

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

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

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

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

---

<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# **EXHIBIT B**





## Environmental Research Center

3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
619-500-3090

August 12, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 attached with the copy of this letter served to the alleged Violator identified below.

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

**Advanced Nutrition Inc, individually and dba Advanced Nutrition by Zahler**

**Consumer Product 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. Advanced Nutrition by Zahler Multi Vitamin Energy - Lead**
- 2. Advanced Nutrition by Zahler Multi Vitamin Digestion - Lead**
- 3. Advanced Nutrition by Zahler StressMaster - Lead**
- 4. Advanced Nutrition by Zahler Revolution Potent Urinary Tract Formula - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least August 12, 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 Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Advanced Nutrition Inc, individually and dba Advanced Nutrition by Zahler)
- 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 Advanced Nutrition Inc, individually and dba Advanced Nutrition by Zahler**

I, Chris Heptinstall, declare:

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

2. I am the Executive Director for the noticing party.

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

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

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



Dated: August 12, 2021

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Chris Heptinstall

**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 August 12, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Advanced Nutrition Inc, individually  
and dba Advanced Nutrition by Zahler  
50 Lawrence Ave  
Brooklyn, NY 11230

On August 12, 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On August 12, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

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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

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

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.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, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

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

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

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

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

August 12, 2021

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

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

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

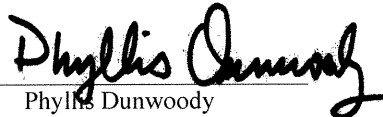
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On August 12, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on August 12, 2021, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Orange  
County  
300 N Flower St  
Santa Ana, CA 92703

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

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

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

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

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
Downieville, CA 95936

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

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

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

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

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

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

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

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

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

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

## APPENDIX A

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

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

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

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

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

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

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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



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

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

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

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

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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