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16 AJINOMOTO CAMBROOKE, INC., individually and dba
17 CAMBROOKE THERAPEUTICS and ENU NUTRITION

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

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

23 **Plaintiff,**

24 **vs.**

25 **AJINOMOTO CAMBROOKE, INC.,**
26 **individually and dba CAMBROOKE**
27 **THERAPEUTICS and ENU NUTRITION;**
28 **TROVRX, INC., individually and dba**
TROVITA HEALTH SCIENCE and ENU
NUTRITION; and DOES 1-100

Defendants.

CASE NO. 21CV000970

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 22, 2021
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On October 22, 2021, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU
7 Nutrition (“ENU Nutrition”) and TrovRx, Inc., individually and dba Trovita Health Science
8 and Does 1-100. Subsequently, on November 19, 2021, a First Amended Complaint was filed
9 (hereinafter referred to as the operative “Complaint”). In this action, ERC alleges that a
10 number of products manufactured, distributed, or sold by ENU Nutrition contain lead, a
11 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and mercury, a
12 chemical listed under Proposition 65 as a reproductive toxin, and expose consumers to these
13 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
14 individually as a “Covered Product” or collectively as “Covered Products”) are: Cambrooke
15 Enō Nutritional Shake Creamy Vanilla and Cambrooke Enō Nutritional Shake Creamy
16 Chocolate.

17 **1.2** ERC and ENU Nutrition are hereinafter referred to individually as a “Party” or
18 collectively as the “Parties.”

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

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

27 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
28 dated August 12, 2021 and September 9, 2021, that were served on the California Attorney

1 General, other public enforcers, and ENU Nutrition (“First Notices”). True and correct copies
2 of the First Notices dated August 12, 2021 and September 9, 2021 are attached hereto as
3 *Exhibits A* and *B* and incorporated herein by reference. More than 60 days have passed since
4 the First Notices were served on the Attorney General, public enforcers, and ENU Nutrition
5 and no designated governmental entity has filed a Complaint against ENU Nutrition with
6 regard to the Covered Products or the alleged violations.

7 **1.6** On August 25, 2022, ERC served a Third Notice of Violation on the California
8 Attorney General, other public enforcers, and ENU Nutrition (“Third Notice”). A true and
9 correct copy of the Third Notice is attached hereto as *Exhibit C* and incorporated by reference.
10 The Parties stipulate that the First Amended Complaint be deemed amended as of October 27,
11 2022 to include the products set forth in ERC’s Third Notice. This Consent Judgment shall
12 apply to all Covered Products set forth in Paragraph 1.1, effective 60 days after August 25,
13 2022, provided no public enforcer is diligently pursuing the allegations set forth in ERC’s
14 Third Notice. On October 27, 2022 more than 60 days will have passed since ERC’s Third
15 Notice was served on the Attorney General, public enforcers, and ENU Nutrition. The First
16 Notices and the Third Notice are collectively referred to as “Notices,” and further references to
17 ERC’s “Complaint” shall include the Third Notice.

18 **1.7** ERC’s Notices and Complaint allege that use of the Covered Products by
19 California consumers exposes them to lead and/or mercury without first receiving clear and
20 reasonable warnings from ENU Nutrition, which is in violation of California Health and Safety
21 Code section 25249.6. ENU Nutrition denies all material allegations contained in the Notices
22 and Complaint.

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

1 issue of law, or violation of law.

2 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
3 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
4 any current or future legal proceeding unrelated to these proceedings.

5 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
6 as a Judgment by this Court (the “Effective Date”).

7 **2. JURISDICTION AND VENUE**

8 For purposes of this Consent Judgment and any further court action that may become
9 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
10 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
11 over ENU Nutrition as to the acts alleged in the Complaint, that venue is proper in Alameda
12 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
13 resolution of all claims up through and including the Compliance Date (as defined in Section 3.1,
14 below) that were or could have been asserted in this action based on the facts alleged in the
15 Notices and Complaint.

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

17 **3.1** Beginning sixty (60) days after the Effective Date (the “Compliance Date”),
18 ENU Nutrition shall be permanently enjoined from manufacturing for sale in the State of
19 California, “[d]istributing into the State of California,” or directly selling in the State of
20 California, any Covered Product that exposes a person to a “Daily Lead Exposure Level” of
21 more than 0.5 micrograms of lead per day or a “Daily Mercury Exposure Level” of more than
22 0.3 micrograms of mercury per day unless it meets the warning requirements under Section
23 3.2.

24 **3.1.1** As used in this Consent Judgment, the term “[d]istributing into the State
25 of California” shall mean to directly ship a Covered Product into California for sale in
26 California or to sell a Covered Product to a distributor that ENU Nutrition knows or has reason
27 to know will sell the Covered Product in California.

28 **3.1.2** For purposes of this Consent Judgment only, and without ENU Nutrition

1 agreeing this is the appropriate measurement of daily lead exposure for any other purpose, the
2 “Daily Lead Exposure Level” when testing under this Consent Judgment shall be measured in
3 micrograms, and shall be calculated using the following formula: micrograms of lead per gram
4 of product, multiplied by grams of product per serving of the product (using the largest serving
5 size appearing on the product label), multiplied by servings of the product per day (for
6 purposes of this Consent Judgment, using the largest number of recommended daily servings
7 appearing on the label), which equals micrograms of lead exposure per day, excluding,
8 pursuant to Section 3.1.3, the amount of lead in the ingredients listed in **Table 1** below, if
9 applicable. If the label contains no recommended daily servings, then for purposes of this
10 Consent Judgment, the number of recommended daily servings shall be one.

11 **3.1.3** For purposes of this Consent Judgment only, and without ENU Nutrition
12 agreeing this is the appropriate measurement of daily mercury exposure for any other purpose,
13 the “Daily Mercury Exposure Level” when testing under this Consent Judgment shall be
14 measured in micrograms, and shall be calculated using the following formula: micrograms of
15 mercury per gram of product, multiplied by grams of product per serving of the product (using
16 the largest serving size appearing on the product label), multiplied by servings of the product
17 per day (for purposes of this Consent Judgment, using the largest number of recommended
18 daily servings appearing on the label), which equals micrograms of mercury exposure per day.
19 If the label contains no recommended daily servings, then for purposes of this Consent
20 Judgment, the number of recommended daily servings shall be one.

21 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product, ENU
22 Nutrition shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in
23 the ingredients listed in **Table 1** that are contained in that Covered Product under the following
24 conditions: For each year that ENU Nutrition claims entitlement to a “naturally occurring”
25 allowance for lead, ENU Nutrition shall provide ERC, for a period of three (3) years after the
26 Effective Date, with the following information: (a) ENU Nutrition must produce to ERC a
27 written list of each ingredient in the Covered Product, and the amount, measured in grams, of
28 each such ingredient contained therein for which a “naturally occurring” allowance is claimed;

(b) ENU Nutrition must provide ERC with documentation of laboratory testing, conducted during the year for which the “naturally occurring” allowance is claimed, that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in each ingredient listed in **Table 1** that is contained in the Covered Product and for which ENU Nutrition intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any of the ingredients listed in **Table 1** that are contained in the Covered Product, ENU Nutrition shall be entitled to deduct the amount of lead contained in each ingredient, up to the full amount of the allowance for each ingredient as shown in **Table 1**, for those ingredients that are in the Covered Product; and (d) If the Covered Product does not contain any of the ingredients listed in **Table 1**, ENU Nutrition shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for those ingredients. The information required by Sections 3.1.4(a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary thereof, for any year over the next three (3) years after the Effective Date, that ENU Nutrition shall claim entitlement to the “naturally occurring” allowance:

TABLE 1

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

1 **3.2 Clear and Reasonable Warnings**


2 If ENU Nutrition is required to provide a warning pursuant to Section 3.1, one of the
3 following warnings must be utilized, where allowable by law (“Warning”):

4 **OPTION 1 (the “Long-Form Warning”):**

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

8 or

9 **OPTION 2 (the “Short-Form Warning”):**

10  **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov

11 ENU Nutrition shall use the phrase “cancer and” in the Warning if ENU Nutrition has
12 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
13 determined pursuant to the quality control methodology set forth in Section 3.4 or if ENU
14 Nutrition has reason to believe that another Proposition 65 chemical may be present which may
15 require a cancer warning. For the Short-Form Warning, the entire Warning must be in a type size
16 no smaller than the largest type size used for other consumer information on the product. In no
17 case shall the Warning appear in a type size smaller than 6-point type.

18 The Warning shall be securely affixed to or printed upon the label of each package of
19 Covered Product, and it must be set off from other surrounding information and enclosed in a
20 box. In addition, for any Covered Product sold over the internet, the Long-Form Warning shall
21 appear in the Product description on the main product display page or on the checkout page
22 when a California delivery address is indicated for any purchase of any Covered Product. If
23 necessary to avoid confusion, an asterisk or other identifying method must be utilized to
24 identify which products on the checkout page are subject to the Warning. In no event shall any
25 internet or website Warning be contained in or made through a link.

26 The Warning shall comply with Prop 65 regulations as to size and prominence, and the
27 word “**WARNING**” shall be in all capital letters and in bold print. No statements intended to or
28 likely to have the effect of diminishing the impact of the Warning on the average lay person shall

1 accompany the Warning. Further, no statements may accompany the Warning that state or imply
2 that the source of the listed chemical has an impact on or results in a less harmful effect of the
3 listed chemical.

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

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

11 **3.3 Conforming Covered Products**

12 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
13 Level” is no greater than 0.5 micrograms of lead per day and the “Daily Mercury Exposure Level”
14 is no greater than 0.3 micrograms of mercury per day as determined by the exposure methodology
15 set forth in Section 3.1.2 and the quality control methodology described in Section 3.4.

16 **3.4 Testing and Quality Control Methodology**

17 **3.4.1** Subject to Section 3.4.7, beginning within one year of the Effective
18 Date, ENU Nutrition shall arrange for lead and/or mercury testing of the Covered Products at
19 least once a year for a minimum of three consecutive years by arranging for testing of three (3)
20 randomly selected samples of each of the Covered Products, in the form intended for sale to
21 the end-user, which ENU Nutrition intends to sell or is manufacturing for sale in California,
22 directly selling to a consumer in California or “Distributing into the State of California.” If
23 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered
24 Product during each of three consecutive years, then the testing requirements of this Section
25 will no longer be required as to that Covered Product. However, if during or after the three-
26 year testing period, ENU Nutrition changes ingredient suppliers for any of the Covered
27 Products and/or reformulates any of the Covered Products, ENU Nutrition shall test that
28 Covered Product annually for at least two (2) consecutive years after such change is made.

1 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” and the
2 “Daily Mercury Exposure Level” the highest lead and/or mercury detection result of the three
3 (3) randomly selected samples of the Covered Products will be controlling.

4 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
5 laboratory method that complies with the performance and quality control factors appropriate
6 for the method used, including limit of detection and limit of quantification, sensitivity,
7 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
8 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
9 mg/kg.

10 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
11 independent third party laboratory certified by the California Environmental Laboratory
12 Accreditation Program or an independent third-party laboratory that is registered with the
13 United States Food & Drug Administration.

14 **3.4.5** Nothing in this Consent Judgment shall limit ENU Nutrition’s ability to
15 conduct, or require that others conduct, additional testing of the Covered Products, including
16 the raw materials used in their manufacture.

17 **3.4.6** Within thirty (30) days of ERC’s written request, which shall not be
18 made more frequently than once every twelve (12) months for any given Covered Product,
19 ENU Nutrition shall deliver lab reports obtained pursuant to Section 3.4 to ERC. ENU
20 Nutrition shall retain all test results and documentation for a period of five years from the date
21 of each test.

22 **3.4.7** The testing requirements of Section 3.4 do not apply to any Covered
23 Product for which ENU Nutrition is providing a Warning, continuously and without
24 interruption from the Compliance Date, pursuant to Section 3.2 of this Agreement. In the event
25 a Warning is provided after the Compliance Date but ENU Nutrition thereafter ceases to
26 provide the Warning, the testing and reporting requirements of Section 3.4 of this Agreement
27 shall apply beginning within one year after the date the Warning ceases to be provided, unless
28 ENU Nutrition can show to the satisfaction of ERC that the cessation in providing the Warning

1 was a temporary error that was resolved when discovered.

2 **4. SETTLEMENT PAYMENT**

3 **4.1** In full satisfaction of all potential civil penalties, additional settlement
4 payments, attorney’s fees, and costs, ENU Nutrition shall make a total payment of \$40,000.00
5 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). ENU
6 Nutrition shall make this payment by wire transfer to ERC’s account, for which ERC will give
7 ENU Nutrition the necessary account information. The Total Settlement Amount shall be
8 apportioned as follows:

9 **4.2** \$8,000.00 shall be considered a civil penalty pursuant to California Health and
10 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,000.00) of the civil penalty to the
11 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
12 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
13 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,000.00) of the civil penalty.

14 **4.3** \$3,106.04 shall be distributed to ERC as reimbursement to ERC for reasonable
15 costs incurred in bringing this action.

16 **4.4** \$28,893.96 shall be distributed to ERC for its in-house legal fees. Except as
17 explicitly provided herein, each Party shall bear its own fees and costs.

18 **4.6** In the event that ENU Nutrition fails to remit the Total Settlement Amount
19 owed under Section 4 of this Consent Judgment on or before the Due Date, ENU Nutrition
20 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
21 shall provide written notice of the delinquency to ENU Nutrition via electronic mail. If ENU
22 Nutrition fails to deliver the Total Settlement Amount within 5 (5) days from receipt of the
23 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
24 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
25 ENU Nutrition agrees to pay ERC’s reasonable attorney’s fees and costs incurred to collect the
26 payment due under this Consent Judgment.

27 **5. MODIFICATION OF CONSENT JUDGMENT**

28 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by

1 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
2 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
3 modified consent judgment.

4 **5.2** If a Party seeks to modify this Consent Judgment under Section 5.1, then that
5 Party must provide written notice to the other Party of its intent (“Notice of Intent”). If the
6 non-moving Party seeks to meet and confer regarding the proposed modification in the Notice
7 of Intent, then it must provide written notice to the moving Party within thirty (30) days of
8 receiving the Notice of Intent. If the non-moving Party notifies the moving Party in a timely
9 manner of its intent to meet and confer, then the Parties shall meet and confer in good faith as
10 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
11 days of the non-moving Party’s notification of its intent to meet and confer. Within thirty (30)
12 days of such meeting, if the non-moving Party disputes the proposed modification, it shall
13 provide to the moving Party a written basis for its position. The Parties shall continue to meet
14 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
15 Should it become necessary, the Parties may agree in writing to different deadlines for the
16 meet-and-confer period.

17 **5.3** In the event that ENU Nutrition initiates or otherwise requests a modification
18 under Section 5.1, and the meet and confer process leads to an unopposed or joint motion or
19 application for a modification of the Consent Judgment, ENU Nutrition shall reimburse ERC
20 its costs and reasonable attorney’s fees for the time spent in the meet-and-confer process and
21 filing and arguing the motion or application.

22 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
23 **JUDGMENT**

24 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
25 terminate this Consent Judgment.

26 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
27 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
28 inform ENU Nutrition in a reasonably prompt manner of its test results, including information

1 sufficient to permit ENU Nutrition to identify the Covered Products at issue. ENU Nutrition
2 shall, within thirty (30) days following such notice, provide ERC with testing information,
3 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and
4 3.4.4, demonstrating ENU Nutrition's compliance with the Consent Judgment. The Parties
5 shall first attempt to resolve the matter prior to ERC taking any further legal action.

6 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

14 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
15 on behalf of itself and in the public interest, and ENU Nutrition and its respective officers,
16 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
17 franchisees, licensees, customers (not including private label customers of ENU Nutrition),
18 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
19 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
20 of them (collectively, "Released Parties").

21 **8.2** ERC, acting in the public interest, releases the Released Parties from any
22 and all claims for violations of Proposition 65 up through the Compliance Date based on
23 exposure to lead and/or mercury from the Covered Products as set forth in the Notices of
24 Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released
25 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
26 penalties, fees, costs, and expenses asserted, or that could have been asserted from the
27 handling, use, or consumption of the Covered Products, as to any alleged violation of
28 Proposition 65 or its implementing regulations arising from the failure to provide Proposition

1 65 warnings on the Covered Products regarding lead and/or mercury up to and including the
2 Compliance Date.

3 **8.3** ERC on its own behalf only, and ENU Nutrition on its own behalf only,
4 further waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of
6 Proposition 65 in connection with the Notices and Complaint up through and including the
7 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
8 right to seek to enforce the terms of this Consent Judgment.

9 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
10 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
11 discovered. ERC on behalf of itself only, and ENU Nutrition on behalf of itself only,
12 acknowledge that this Consent Judgment is expressly intended to cover and include all such
13 claims up through and including the Compliance Date, including all rights of action therefore.
14 ERC and ENU Nutrition acknowledge that the claims released in Sections 8.2 and 8.3 above
15 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
16 any such unknown claims. California Civil Code section 1542 reads as follows:

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

21 ERC on behalf of itself only, and ENU Nutrition on behalf of itself only, acknowledge and
22 understand the significance and consequences of this specific waiver of California Civil Code
23 section 1542.

24 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
25 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
26 exposures to lead and mercury in the Covered Products as set forth in the Notices and
27 Complaint.

28 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or

1 environmental exposures arising under Proposition 65, nor shall it apply to any of ENU
2 Nutrition's products other than the Covered Products.

3 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

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

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

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

20 With a copy to:

21 Charles W. Poss
22 Environmental Research Center, Inc.
23 3111 Camino Del Rio North, Suite 400
24 San Diego, CA 92108
25 Ph: (619) 500-3090
26 Email: charles.poss@erc501c3.org

27 **FOR AJINOMOTO CAMBROOKE, INC., individually and dba CAMBROOKE
28 THERAPEUTICS and ENU NUTRITION:**

Howard J Lossing
Ajinomoto Cambrooke, Inc.
4 Copeland Drive
Ayer, MA 01432
Email: Hlossing@Cambrooke.com

1 With a copy to:
2 Kerry E. Shea (SBN 142099)
3 Davis Wright Tremaine LLP
4 50 California Street, 23rd Floor
5 San Francisco, CA 94111
6 Ph: (415)276-6500
7 Email: KerryShea@dwt.com

6 **12. COURT APPROVAL**

7 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
8 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
9 Consent Judgment.

10 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
11 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
12 prior to the hearing on the motion.

13 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
14 void and have no force or effect.

15 **13. EXECUTION AND COUNTERPARTS**

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

19 **14. DRAFTING**

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

28 ///

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

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

6 **16. ENFORCEMENT**

7 ERC 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:

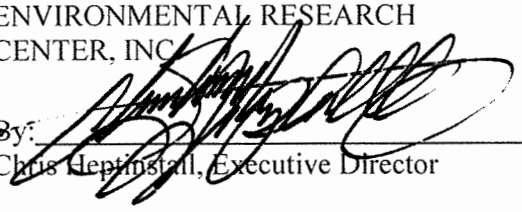
1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
2 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
3 been diligently prosecuted, and that the public interest is served by such settlement; and

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:**

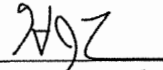
7 Dated: 11/11, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

8
9
10 By: 
Chris Heptinstall, Executive Director

11 Dated: Oct 31, 2022


AJINOMOTO CAMBROOKE, INC.,
individually and dba CAMBROOKE
THERAPEUTICS and ENU NUTRITION

12
13
14
15 
16 By: Howard J Lossing
Its: CEO

17 **APPROVED AS TO FORM:**

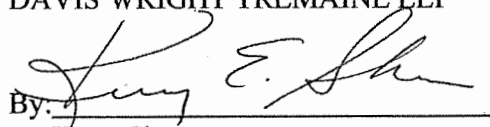
18
19 Dated: November 1, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC.

20
21 By: 
22 Charles W. Poss
23 In-House Counsel

24 Dated: November 1, 2022

DAVIS WRIGHT TREMAINE LLP

25
26 By: 
27 Kerry Shea
28 Attorney for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke
Therapeutics And Enu Nutrition;

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



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 Violators 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 Violators 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 Violators 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 Violators identified below.

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

**Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition
TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition**

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:

Cambrooke Enū Nutritional Shake Creamy Vanilla - Lead

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 12, 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 Violators violated Proposition 65 because they 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 Violators 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 Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition; TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition and their Registered Agents for Service of Process Only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition; TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 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 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: August 12, 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 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
Ajinomoto Cambrooke, Inc., individually and dba
Cambrooke Therapeutics and ENU Nutrition
4 Copeland Dr
Ayer, MA 01432

CSC- Lawyers Incorporating Service Company
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
221 Bolivar St
Jefferson, MO 65101

Current President or CEO
Ajinomoto Cambrooke, Inc., individually and dba
Cambrooke Therapeutics and ENU Nutrition
ATTN: Legal Dept.
4200 E Concours Dr Ste 100
Ontario, CA 91764

Corporation Service Company Which Will Do
Business in California as CSC-Lawyers
Incorporating Service
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
2710 Gateway Oaks Dr, Ste 150N
Sacramento, CA 95833

Current President or CEO
TrovRx, Inc., individually and dba Trovita
Health Science and ENU Nutrition
230 South Broad St, 17th Fl
Philadelphia, PA 19102

United States Corporation Agents, Inc.
(Registered Agent for TrovRx, Inc.,
individually and dba Trovita
Health Science and ENU Nutrition)
221 N Broad St, Ste 3A
Middletown, DE 19709

Corporation Service Company
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
501 Louisiana Ave
Baton Rouge, LA 70802

Paul Taylor
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
4 Copeland Dr
Ayer, MA 01432

Corporation Service Company
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
2626 Glenwood Ave, Ste 550
Raleigh, NC 27608

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> :

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

August 12, 2021

Page 5

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

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

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

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

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

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

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

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

Michelle Latimer, Program Coordinator
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mlatimer@co.lassen.ca.us

David Hollister, District Attorney
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Quincy, CA 95971
davidhollister@countyofplumas.com

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

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

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

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

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

August 12, 2021

Page 6

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
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San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alethea Sargent, Assistant District Attorney
White Collar Division
San Francisco District Attorney's Office
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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
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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
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
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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

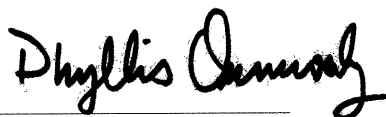
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 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 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

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

District Attorney, 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, 2nd
Floor
Downieville, CA 95936

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



Environmental Research Center

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

September 9, 2021

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

Dear Alleged Violators 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 Violators 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 Violators 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 Violators identified below.

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

**Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition
TroRx, Inc., individually and dba Trovita Health Science and ENU Nutrition**

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

Cambrooke Enū Nutritional Shake Creamy Chocolate - 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.

September 9, 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 September 9, 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 Violators violated Proposition 65 because they 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 Violators 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 Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition; TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition and their Registered Agents for Service of Process Only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition; TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 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 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: September 9, 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 September 9, 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
Ajinomoto Cambrooke, Inc., individually and dba
Cambrooke Therapeutics and ENU Nutrition
4 Copeland Dr
Ayer, MA 01432

CSC- Lawyers Incorporating Service Company
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
221 Bolivar St
Jefferson, MO 65101

Current President or CEO
Ajinomoto Cambrooke, Inc., individually and dba
Cambrooke Therapeutics and ENU Nutrition
ATTN: Legal Dept.
4200 E Concours Dr Ste 100
Ontario, CA 91764

Corporation Service Company Which Will Do
Business in California as CSC-Lawyers
Incorporating Service
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
2710 Gateway Oaks Dr, Ste 150N
Sacramento, CA 95833

Current President or CEO
TrovRx, Inc., individually and dba Trovita
Health Science and ENU Nutrition
230 South Broad St, 17th Fl
Philadelphia, PA 19102

United States Corporation Agents, Inc.
(Registered Agent for TrovRx, Inc.,
individually and dba Trovita
Health Science and ENU Nutrition)
221 N Broad St, Ste 3A
Middletown, DE 19709

Corporation Service Company
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
501 Louisiana Ave
Baton Rouge, LA 70802

Paul Taylor
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
4 Copeland Dr
Ayer, MA 01432

Corporation Service Company
(Registered Agent for Ajinomoto Cambrooke, Inc.,
individually and dba Cambrooke Therapeutics
and ENU Nutrition)
2626 Glenwood Ave, Ste 550
Raleigh, NC 27608

On September 9, 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> :

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

September 9, 2021

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Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On September 9, 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

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

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

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

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

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

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

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

Michelle Latimer, Program Coordinator
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Susanville, CA 96130
mlatimer@co.lassen.ca.us

David Hollister, District Attorney
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Quincy, CA 95971
davidhollister@countyofplumas.com

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

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

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

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

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

September 9, 2021

Page 6

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

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
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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
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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
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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San Jose, CA 95110
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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

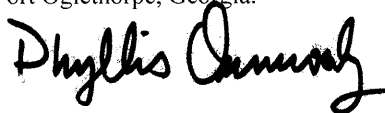
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 September 9, 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 September 9, 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 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

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

District Attorney, 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, 2nd
Floor
Downieville, CA 95936

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT C



Environmental Research Center

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

August 25, 2022

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

Dear Alleged Violators 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 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 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 Violators identified below.

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

**Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition
TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition**

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:

- **Cambrooke Enō Nutritional Shake Creamy Vanilla - Mercury**
- **Cambrooke Enō Nutritional Shake Creamy Chocolate – Mercury**

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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 25, 2019, 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.

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 Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition and TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Ajinomoto Cambrooke, Inc., individually and dba Cambrooke Therapeutics and ENU Nutrition and TrovRx, Inc., individually and dba Trovita Health Science and ENU Nutrition

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 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 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: August 25, 2022

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 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified 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”** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

Ajinomoto Cambrooke, Inc., individually and dba Cambrooke
Therapeutics and ENU Nutrition; TrovRx, Inc., individually
and dba Trovita Health Science and ENU Nutrition
c/o Kerry E. Shea
Davis Wright Tremaine LLP
505 Montgomery Street Ste. 800
San Francisco, CA 94111
Email: KerryShea@dwt.com

On August 25, 2022, 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 25, 2022, 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
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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

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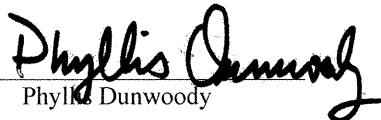
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Prop65DA@santacruzcounty.us

Jeff W. Reisig, District Attorney
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cfepd@yolocounty.org

On August 25, 2022, 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 25, 2022, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
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P.O. Box 248
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District Attorney, Butte
County
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245
Oroville, CA 95965

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

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

District Attorney, El Dorado
County
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Placerville, CA 95667

District Attorney, Glenn
County
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Eureka, CA 95501

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El Centro, CA 92243

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

District Attorney, Kings
County
1400 West Lacey Boulevard
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District Attorney, Lake County
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District Attorney, Modoc
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Alturas, CA 96101-4020

District Attorney, Mono
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District Attorney, San
Bernardino County
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San Bernadino, CA 92415

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District Attorney, Trinity
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Weaverville, CA 96093

District Attorney, Tuolumne
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Sonora, CA 95370

District Attorney, Yuba
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Marysville, CA 95901

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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