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16 Attorneys for Defendant EVIG, LLC

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

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

22 **Plaintiff,**

23 **v.**

24 **EVIG, LLC, individually and dba**  
25 **BALANCE OF NATURE; and DOES 1-100,**

26 **Defendants.**

**CASE NO. 22CV008365**

**[PROPOSED] STIPULATED**  
**CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 14, 2022

Trial Date: November 18, 2024

27 **1. INTRODUCTION**

28 **1.1** On March 14, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
2 (“Proposition 65”), against EVIG, LLC, individually and dba Balance of Nature (“EVIG”) and  
3 Does 1-100. In this action, ERC alleges that one of the products manufactured, distributed, or  
4 sold by EVIG contains lead, a chemical listed under Proposition 65 as a carcinogen and  
5 reproductive toxin, and exposes consumers to this chemical at a level requiring a Proposition  
6 65 warning. This product (referred to hereinafter as the “Covered Product”) is: Balance of  
7 Nature Whole Food Fiber & Spice.

8       **1.2**     EVIG contends that the Covered Product is made up of wholly natural  
9 ingredients and any lead in the Covered Product is naturally occurring and present in food  
10 solely as the result of absorption which is naturally present in the environment. EVIG further  
11 contends that there are no added chemicals to the product, there are no added fillers, synthetics,  
12 or sugars, and the only contents of the product are whole food ingredients.

13       **1.3**     ERC and EVIG are hereinafter referred to individually as a “Party” or  
14 collectively as the “Parties.”

15       **1.4**     ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
16 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
17 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
18 and encouraging corporate responsibility.

19       **1.5**     ERC contends that EVIG is a business entity that has employed ten or more  
20 persons at all times relevant to this action and qualifies as a “person in the course of doing  
21 business” within the meaning of Proposition 65, and that EVIG manufactures, distributes, and/or  
22 sells the Covered Product.

23       **1.6**     The Complaint is based on allegations contained in ERC’s Notice of Violation  
24 dated December 9, 2021 that was served on the California Attorney General, other public  
25 enforcers, and EVIG (“Notice”). A true and correct copy of the Notice dated December 9, 2021  
26 is attached hereto as **Exhibit A** and incorporated herein by reference. More than 60 days have  
27 passed since the Notice was served on the Attorney General, public enforcers, and EVIG and  
28 no designated governmental entity has filed a complaint against EVIG with regard to the

1 Covered Product or the alleged violations.

2           **1.7**     ERC’s Notice and Complaint allege that use of the Covered Product by  
3 California consumers exposes them to lead without first receiving clear and reasonable  
4 warnings from EVIG, which is in violation of California Health and Safety Code section  
5 25249.6. EVIG denies all allegations contained in the Notice and Complaint and specifically  
6 contends that the Covered Product is made up of wholly natural ingredients and any lead in the  
7 Covered Product is naturally occurring.

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

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

18           **1.10**    The Effective Date of this Consent Judgment is the date on which it is entered  
19 as a Judgment by this Court.

20    **2.    JURISDICTION AND VENUE**

21           For purposes of this Consent Judgment and any further court action that may become  
22 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
23 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
24 over EVIG as to the acts alleged in the Complaint, that venue is proper in Alameda County, and  
25 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all  
26 claims up through and including the Effective Date that were or could have been asserted in this  
27 action based on the facts alleged in the Notice and Complaint.

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


2             **3.1**     Beginning on the Effective Date, EVIG shall be permanently enjoined from  
3 manufacturing for sale in the State of California, “Distributing into the State of California,” or  
4 directly selling in the State of California (collectively referred to as “California Sales  
5 Practices”), any Covered Product that exposes a person to a “Daily Lead Exposure Level” of  
6 more than 0.5 micrograms of lead per day unless it meets the warning requirements under  
7 Section 3.2.

8                     **3.1.1**   As used in this Consent Judgment, the term “Distributing into the State  
9 of California” shall mean to directly ship a Covered Product into California for sale in  
10 California or to sell a Covered Product to a distributor that EVIG knows or has reason to know  
11 will sell the Covered Product in California.

12                     **3.1.2**   For purposes of this Consent Judgment, the “Daily Lead Exposure  
13 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
14 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
15 product (using the largest serving size appearing on the product label), multiplied by servings  
16 of the product per day (using the largest number of recommended daily servings appearing on  
17 the label), which equals micrograms of lead exposure per day. If the label contains no  
18 recommended daily servings, then the number of recommended daily servings shall be one.

19             **3.2 Clear and Reasonable Warnings**

20             If EVIG is required to provide a warning (“Warning”) when engaging in California Sales  
21 Practices with respect to the Covered Product pursuant to Section 3.1, EVIG and the Warning  
22 must comply with Proposition 65. The Warning shall be in the following form:

23              **WARNING:** Consuming this product can expose you to chemicals including lead  
24 which is known to the State of California to cause [cancer and] birth defects or other  
25 reproductive harm. For more information go to <https://www.p65warnings.ca.gov/food>.

26             EVIG shall use the phrase “cancer and” in the Warning if EVIG has reason to believe that  
27 the “Daily Lead Exposure Level” is greater than 15 micrograms of lead.

28             The Warning shall be securely affixed to or printed upon the label of each Covered

1 Product, and it must be set off from other surrounding information and enclosed in a box. In  
2 addition, on or before February 1, 2025 or another date as agreed to in writing by the parties, for  
3 any Covered Product sold over the internet when a California delivery address is provided for the  
4 purchase, the Warning shall appear on the checkout page or at any other point prior to completing  
5 the purchase of a Covered Product so long as the Warning is prominently displayed such that the  
6 purchaser does not have to search for it in the general content of the website. An asterisk or other  
7 identifying method must be utilized to identify which products on the checkout page are subject to  
8 the Warning. The Warning for any Covered Product may not be made through a hyperlink. The  
9 Warning shall contain a symbol consisting of a black exclamation point in a yellow equilateral  
10 triangle with a bold black outline placed to the left of the text of the word “**WARNING,**” in a size  
11 no smaller than the height of the word “**WARNING.**” No statements intended to or likely to have  
12 the effect of diminishing the impact of the Warning on the average lay person shall accompany  
13 the Warning.

14 The Warning shall be at least the same size as the largest of any other health or safety  
15 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
16 capital letters and in bold print. EVIG must display the Warning with such conspicuousness, as  
17 compared with other words, statements or designs on the label, or on its website, if applicable, to  
18 render the Warning likely to be seen, read and understood by an ordinary individual under  
19 customary conditions of purchase or use of the product. The Warning may contain information  
20 that is supplemental to the content required by this Section 3.2 only to the extent that it identifies  
21 the source of the exposure or provides information on how to avoid or reduce exposure to the  
22 identified chemical or chemicals. Where a sign or label used to provide the Warning for a  
23 Covered Product includes consumer information about the Covered Product in a language other  
24 than English, the Warning must also be provided in that language in addition to English.

25 For purposes of this Consent Judgment, the term “label” means a display of written,  
26 printed or graphic material that is printed on or affixed to a Covered Product or its immediate  
27 container (or lid) or wrapper.

28 **3.3** Notwithstanding any other provision of this Consent Judgment, EVIG shall be

1 deemed to be in compliance with this Consent Judgment if, after the Effective Date, it provides a  
2 warning in compliance with new or modified final safe harbor warning regulations adopted by  
3 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)  
4 applicable to the Covered Products and exposure to lead. In the event that Proposition 65, either  
5 as a whole or as specifically applicable to the Covered Products or listed chemicals at issue in the  
6 case, is repealed or federally preempted, or if new or different safe harbor levels are established  
7 as applicable to the Covered Products, or if Proposition 65 is otherwise rendered inapplicable to  
8 the Covered Products or the listed chemicals at issue in this case, all by any final California  
9 regulation or statute, or by a decision of the California Supreme Court or the United States  
10 Supreme Court or by the California legislature or the United States Congress, or if any provision  
11 of this Consent Judgment is specifically rendered inapplicable or no longer required as to the  
12 Covered Products as a result of any such regulatory or statutory change, repeal or preemption or  
13 decision of the California Supreme Court or the United States Supreme Court, or due to binding  
14 federal laws or regulations, then EVIG may provide written notice to ERC of any asserted  
15 change in the law and seek modification of the Consent Judgment pursuant to Section 5.

16 EVIG contends that the Covered Product sold directly into California by EVIG currently  
17 has a warning label affixed in compliance with Proposition 65.

#### 18 **4. SETTLEMENT PAYMENT**

19 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
20 payments, attorney’s fees, and costs, EVIG shall make a total payment of \$115,000.00 (“Total  
21 Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). EVIG shall  
22 make this payment by wire transfer to ERC’s account, for which ERC will give EVIG the  
23 necessary account information. The Total Settlement Amount is reasonable based upon the  
24 criteria outlined in California law, complies with California Code of Regulations, title 11,  
25 sections 3203, subdivision (d) and 3204, and shall be apportioned as follows:

26 **4.2** \$15,000.00 of the Total Settlement Amount shall be considered a civil penalty  
27 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%  
28 (\$11,250.00) of the civil penalty to the Office of Environmental Health Hazard Assessment

1 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in  
2 accordance with California Health and Safety Code section 25249.12(c). ERC will retain the  
3 remaining 25% (\$3,750.00) of the civil penalty.

4 **4.3** \$5,435.78 of the Total Settlement Amount shall be distributed to ERC as  
5 reimbursement to ERC for reasonable costs incurred in bringing this action.

6 **4.4** \$38,471.31 of the Total Settlement Amount shall be distributed to Wraith Law  
7 as reimbursement of ERC’s attorney fees, while \$56,092.91 of the Total Settlement Amount  
8 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein,  
9 each Party shall bear its own fees and costs.

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

19 **5. MODIFICATION OF CONSENT JUDGMENT**

20 **5.1** This Consent Judgment may be modified, except for the monetary terms set  
21 forth in Section 4, only by (i) written stipulation of the Parties and upon entry by the Court of a  
22 modified consent judgment or (ii) motion of the either party and upon entry by the Court of a  
23 modified consent judgment.

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

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

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1     **7. APPLICATION OF CONSENT JUDGMENT**

2             This Consent Judgment applies to, is binding upon, and benefits the Parties and their  
3     respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
4     affiliates divisions, franchisees, licensees, customers (excluding private labelers), distributors,  
5     wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
6     application to any Covered Product that is distributed or sold exclusively outside the State of  
7     California and that is not used by California consumers.

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

9             **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC, on  
10    behalf of itself and in the public interest, and EVIG and its respective officers, directors,  
11    shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
12    franchisees, licensees, customers (not including private label customers of EVIG), distributors,  
13    wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
14    of any Covered Product, and the predecessors, successors, and assigns of any of them  
15    (collectively, “EVIG Released Parties”).

16            **8.2**     ERC, acting in the public interest, releases the EVIG Released Parties from any  
17    and all claims for violations of Proposition 65 up through and including the Effective Date  
18    based on exposure to lead from the Covered Product as set forth in the Notice of Violation.  
19    ERC, acting on behalf of itself only, hereby fully releases and discharges the EVIG Released  
20    Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
21    penalties, fees, costs, and expenses asserted, or that could have been asserted, from the  
22    handling, use, or consumption of the Covered Product, as to any alleged violation of  
23    Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
24    65 warnings on the Covered Product regarding lead up to and including the Effective Date.

25            **8.3**     ERC on its own behalf only, and EVIG on its own behalf only, further waive  
26    and release any and all claims they may have against each other for all actions or statements  
27    made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in  
28    connection with the Notice and Complaint up through and including the Effective Date,



1 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
2 enforce the terms of this Consent Judgment.

3 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
4 alleged in the Notice and Complaint, and relating to the Covered Product, will develop or be  
5 discovered. ERC on behalf of itself only, and EVIG on behalf of itself only, acknowledge that  
6 this Consent Judgment is expressly intended to cover and include all such claims up through  
7 and including the Effective Date, including all rights of action therefore. ERC and EVIG  
8 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown  
9 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
10 claims. California Civil Code section 1542 reads as follows:

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

15 ERC on behalf of itself only, and EVIG on behalf of itself only, acknowledge and understand  
16 the significance and consequences of this specific waiver of California Civil Code section  
17 1542.

18 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
19 constitute compliance with Proposition 65 by any of the EVIG Released Parties regarding  
20 alleged exposures to lead in the Covered Product as set forth in the Notice and Complaint.

21 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
22 environmental exposures arising under Proposition 65, nor shall it apply to any of EVIG's  
23 products other than the Covered Product.

24 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

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1     **10. GOVERNING LAW**

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

4     **11. PROVISION OF NOTICE**

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

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

9 Chris Heptinstall, Executive Director, Environmental Research Center  
10 3111 Camino Del Rio North, Suite 400  
11 San Diego, CA 92108  
12 Ph: (619) 500-3090  
13 Email: chris.heptinstall@erc501c3.org

14 With a copy to:

15 William F. Wraith  
16 WRAITH LAW  
17 25361 Commercentre Drive, Ste 150  
18 Lake Forest, CA 92630  
19 Ph: (949) 452-1234  
20 Email: bill@wraithlaw.com

21     **FOR EVIG, LLC, individually and dba BALANCE OF NATURE:**

22 Tommy Cummings  
23 Authorized Signor and Executive Vice President of Sales  
24 1568 S. River Road  
25 St. George, Utah 84790  
26 Email: tcummings@bonadmin.com

27 With a copy to:

28 Kurt Harris, Esq., P.C.  
4730 S. Fort Apache Rd., Ste. 300  
Las Vegas, Nevada 89147  
Ph: 702.252.3838

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1 With a copy to:  
2 Douglas B. Thayer  
3 David W. Tufts  
4 DENTONS DURHAM JONES PINEGAR P.C.  
5 3301 N. Thanksgiving Way, Ste. 400  
6 Lehi, Utah 84043  
7 Ph: (801) 375-6600  
8 Email: douglas.thayer@dentons.com  
9 [david.tufts@dentons.com](mailto:david.tufts@dentons.com)

## 10 **12. COURT APPROVAL**

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

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

17 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
18 void and have no force or effect.

## 19 **13. EXECUTION AND COUNTERPARTS**

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

## 23 **14. DRAFTING**

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

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

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

7     **16. ENFORCEMENT**

8             Either Party may, by motion or order to show cause before the Superior Court of  
9 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any  
10 action brought to enforce this Consent Judgment, the moving Party may seek whatever fines,  
11 costs, penalties, or remedies as are provided by law for failure to comply with the Consent  
12 Judgment.

13     **17. ENTIRE AGREEMENT, AUTHORIZATION**

14             **17.1** This Consent Judgment contains the sole and entire agreement and  
15 understanding of the Parties with respect to the entire subject matter herein, including any and  
16 all prior discussions, negotiations, commitments, and understandings related thereto. No  
17 representations, oral or otherwise, express or implied, other than those contained herein have  
18 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
19 herein, shall be deemed to exist or to bind any Party.

20             **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
21 authorized by the Party he or she represents to stipulate to this Consent Judgment.

22     **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
23 **CONSENT JUDGMENT**

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

27             (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
28 equitable settlement of all matters raised by the allegations of the Complaint that the matter has

1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section  
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

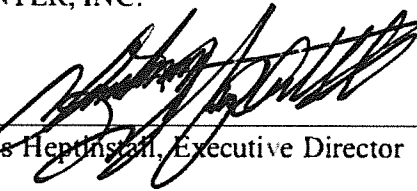
4 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after  
5 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

6 ///

7 **IT IS STIPULATED:**

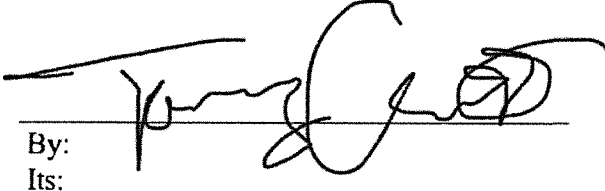
8 Dated: 10/24/, 2024

ENVIRONMENTAL RESEARCH  
CENTER, INC.

9  
10  
11 By:   
Chris Heptinstall, Executive Director

13 Dated: October 22, 2024 .

EVIG, LLC, individually and dba  
BALANCE OF NATURE

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17 By: \_\_\_\_\_  
18 Its: \_\_\_\_\_

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1 **APPROVED AS TO FORM:**

2  
3 Dated: October 24, 2024

WRAITH LAW

4  
5 By:   
6 William F. Wraith  
7 Attorney for Environmental Research  
Center, Inc.

8  
9 Dated: October 22, 2024

DENTONS DURHAM JONES PINEGAR

10  
11 By:   
12 Doug Thayer  
13 Attorney For EVIG LLC, individually  
14 and dba Balance of Nature.  
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**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: \_\_\_\_\_, 2024

\_\_\_\_\_  
Judge of the Superior Court

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# **EXHIBIT A**



# **WRAITH LAW**

25361 Commercentre Drive  
Suite 150  
Lake Forest, CA 92630  
Tel (949) 452-1234  
Fax (949) 452-1102

December 9, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**EVIG, LLC, individually and dba Balance of Nature**

**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:

**Balance of Nature Whole Food Fiber & Spice – 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.

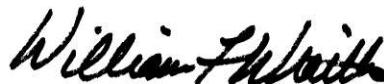
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

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

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

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

Sincerely,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to EVIG, LLC, individually and dba Balance of Nature and its 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  
EVIG, LLC, individually and dba Balance of Nature**

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: December 9, 2021



---

William F. Wraith

**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 December 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 the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Evig, LLC, individually and dba  
Balance of Nature  
PO Box 27740  
Las Vegas, NV 89126

Nevada Corporate Headquarters, Inc  
(Registered Agent for Evig, LLC,  
individually and dba Balance of Nature)  
4730 S Fort Apache Rd, Ste 300  
Las Vegas, NV 89147

Current President or CEO  
Evig, LLC, individually and dba  
Balance of Nature  
4730 S. Fort Apache Rd, #300  
Las Vegas, NV 89147

Lex Howard  
(Registered Agent for Evig, LLC,  
individually and dba Balance of Nature)  
785 E Venture Dr  
Saint George, UT 84790

Current President or CEO  
Evig, LLC, individually and dba  
Balance of Nature  
785 E Venture Dr  
Saint George, UT 84790

On December 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> :

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

On December 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** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

December 9, 2021

Page 5

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White Collar Division  
San Francisco District Attorney's Office  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

December 9, 2021

Page 6

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

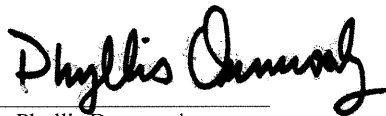
Gregory D. Totten, District Attorney  
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daspecialops@ventura.org

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jbarnes@sonoma-county.org

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

On December 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on December 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  
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202  
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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  
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Crescent City, CA 95531

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Dorado County  
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Placerville, CA 95667

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County  
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1000  
Fresno, CA 93721

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County  
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Willows, CA 95988

District Attorney,  
Humboldt County  
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Eureka, CA 95501

District Attorney,  
Imperial County  
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Ste 102  
El Centro, CA 92243

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Bakersfield, CA 93301

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

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County  
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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  
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Avenue  
Madera, CA 93637

District Attorney, Marin  
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San Rafael, CA 94903

District Attorney,  
Mendocino County  
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Ukiah, CA 95482

District Attorney, Modoc  
County  
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Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
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Bridgeport, CA 93517

District Attorney, Orange  
County  
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Santa Ana, CA 92703

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Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
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San Bernadino, CA  
92415

District Attorney, San  
Mateo County  
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Floor  
Redwood City, CA  
94063

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Redding, CA 96001

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Yreka, CA 96097

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Fairfield, CA 94533

District Attorney,  
Stanislaus County  
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Modesto, CA 95354

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

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Tehama County  
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Red Bluff, CA 96080

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

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

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

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

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

## APPENDIX A

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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