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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF ALAMEDA**

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

19 **Plaintiff,**

20 **vs.**

21 **BIOOPTIMIZERS USA, INC. and DOES 1-**  
22 **100**

23 **Defendants.**

**CASE NO. 22CV015886**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 10, 2022

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On August 10, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a  
27 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
28 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 BiOptimizers USA, Inc. (“BiOptimizers”) and Does 1-100. In this  
3 action, ERC alleges that a number of products manufactured, distributed, or sold by  
4 BiOptimizers contain mercury and/or lead, chemicals listed under Proposition 65 as  
5 carcinogens and/or reproductive toxins, and expose consumers to these chemicals at a level  
6 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a  
7 “Covered Product” or collectively as “Covered Products”) are: (1) BiOptimizers Blood Sugar  
8 Breakthrough (lead) and (2) BiOptimizers Protein Breakthrough Plant-Based Protein  
9 Supplement Berry Bliss (lead, mercury).

10 **1.2** ERC and BiOptimizers are hereinafter referred to individually as a “Party” or  
11 collectively as the “Parties.”

12 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
13 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
14 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
15 and encouraging corporate responsibility.

16 **1.4** For purposes of this Consent Judgment, the Parties agree that BiOptimizers is a  
17 business entity that has employed ten or more persons at all times relevant to this action, and  
18 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.  
19 BiOptimizers manufactures, distributes, and/or sells the Covered Products.

20 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
21 dated May 26, 2022 that was served on the California Attorney General, other public enforcers,  
22 and BiOptimizers (“Notice”). A true and correct copy of the 60-Day Notice dated May 26,  
23 2022 is attached hereto as *Exhibit A* and incorporated herein by reference. More than 60 days  
24 have passed since the Notice was served on the Attorney General, public enforcers, and  
25 BiOptimizers and no designated governmental entity has filed a Complaint against  
26 BiOptimizers with regard to the Covered Products or the alleged violations.

27 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products by  
28 California consumers exposes them to mercury and/or lead without first receiving clear and

1 reasonable warnings from BiOptimizers, which is in violation of California Health and Safety  
2 Code section 25249.6. BiOptimizers denies all material allegations contained in the Notice and  
3 Complaint.

4       **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
5 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
6 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
7 or be construed as an admission by any of the Parties or by any of their respective officers,  
8 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
9 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
10 issue of law, or violation of law.

11       **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
13 any current or future legal proceeding unrelated to these proceedings.

14       **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
15 as a Judgment by this Court.

## 16       **2.    JURISDICTION AND VENUE**

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

## 24       **3.    INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

25       **3.1**     Beginning on the Effective Date, BiOptimizers shall be permanently enjoined  
26 from manufacturing for sale in the State of California, “Distributing into the State of  
27 California,” or directly selling in the State of California, any Covered Product that exposes a  
28 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or a

1 “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it  
2 meets the warning requirements under Section 3.2.

3 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
4 of California” shall mean to directly ship a Covered Product into California for sale in  
5 California or to sell a Covered Product to a distributor that BiOptimizers knows will sell the  
6 Covered Product in California.

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

14 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure  
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
16 micrograms of mercury per gram of product, multiplied by grams of product per serving of the  
17 product (using the largest serving size appearing on the product label), multiplied by servings  
18 of the product per day (using the largest number of recommended daily servings appearing on  
19 the label), which equals micrograms of mercury exposure per day. If the label contains no  
20 recommended daily servings, then the number of recommended daily servings shall be one.

21 **3.2 Clear and Reasonable Warnings**

22 If BiOptimizers is required to provide a warning pursuant to Section 3.1, one of the  
23 following warnings must be utilized (“Warning”):


24 **Option 1:**

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

28 Or

///

1           **Option 2:**

2            **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

3  
4           BiOptimizers shall use the phrase “cancer and” in the Warning if BiOptimizers has reason  
5 to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as  
6 determined pursuant to the quality control methodology set forth in Section 3.4 or if BiOptimizers  
7 has reason to believe that another Proposition 65 chemical is present which may require a cancer  
8 warning. As identified in the brackets, the warning shall appropriately reflect whether there is  
9 lead, mercury, or multiple chemicals present in each of the Covered Products.

10           The Warning shall be securely affixed to or printed upon the label of each Covered  
11 Product and it must be set off from other surrounding information and enclosed in a box. In  
12 addition, for any Covered Product sold over the internet, the Warning shall appear on the  
13 checkout page in full text or through a clearly marked hyperlink using the word “**WARNING**”  
14 when a California delivery address is indicated for any purchase of any Covered Product. If a  
15 hyperlink is used, the hyperlink must go directly to a page prominently displaying either the  
16 Option 1 Warning or the Option 2 Warning without content that detracts from the Warning. An  
17 asterisk or other identifying method must be utilized to identify which products on the  
18 checkout page are subject to the Warning.

19           The Warning shall be at least the same size as the largest of any other health or safety  
20 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
21 capital letters and in bold print. No statements intended to or likely to have the effect of  
22 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
23 Further no statements may accompany the Warning that state or imply that the source of the listed  
24 chemical has an impact on or results in a less harmful effect of the listed chemical. For the Option  
25 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with  
26 a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than  
27 the height of the word “**WARNING.**” Where the label for the product is not printed using the  
28 color yellow, the symbol may be in black and white. Further for the Option 2 Warning, the entire

1 Warning must be in a type size no smaller than the largest type size used for other consumer  
2 information on the product. In no case shall the Warning appear in a type size smaller than 6-  
3 point type.

4 BiOptimizers must display the above Warning with such conspicuousness, as compared  
5 with other words, statements or designs on the label, or on its website, if applicable, to render the  
6 Warning likely to be read and understood by an ordinary individual under customary conditions  
7 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 For purposes of this Consent Judgment, when BiOptimizers is required to provide a  
12 warning pursuant to Section 3.1, BiOptimizers may satisfy the warning requirement by complying  
13 with 27 C.C.R. § 25600.2 (2022) and providing the information required by 27 C.C.R. § 25600.2  
14 (2022) to any business that is subject to California Health and Safety Code § 25249.6 and to  
15 which BiOptimizers is selling or transferring the Covered Products.

### 16 **3.3 Conforming Covered Products**

17 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
18 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Mercury Exposure  
19 Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure  
20 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
21 3.4, and that is not known by BiOptimizers to contain other chemicals that violate Proposition  
22 65’s safe harbor thresholds.

### 23 **3.4 Testing and Quality Control Methodology**

24 **3.4.1** Beginning within one year of the Effective Date, BiOptimizers shall  
25 arrange for lead and mercury testing of the Covered Products at least once a year for a  
26 minimum of three consecutive years by arranging for testing of one (1) randomly selected  
27 sample of each of the Covered Products, in the form intended for sale to the end-user, which  
28 BiOptimizers intends to sell or is manufacturing for sale in California, directly selling to a

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

8           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the  
9 “Daily Mercury Exposure Level,” the highest mercury and/or lead detection result of the one  
10 (1) randomly selected sample of the Covered Products will be controlling.

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

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

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

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

#### 27 **4. SETTLEMENT PAYMENT**

28           **4.1** In full satisfaction of all potential civil penalties, additional settlement

1 payments, attorney’s fees, and costs, BiOptimizers shall make a total payment of \$40,000.00  
2 (“Total Settlement Amount”) to ERC within 10 business days of the Effective Date (“Due  
3 Date”). BiOptimizers shall make this payment by wire transfer to ERC’s account, for which  
4 ERC will give BiOptimizers the necessary account information and a W-9 no later than five  
5 business days after the Effective Date. The Total Settlement Amount shall be apportioned as  
6 follows:

7 **4.2** \$9,000.00 shall be considered a civil penalty pursuant to California Health and  
8 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,750.00) of the civil penalty to the  
9 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
10 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
11 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,250.00) of the civil penalty.

12 **4.3** \$1,986.81 shall be distributed to ERC as reimbursement to ERC for reasonable  
13 costs incurred in bringing this action.

14 **4.4** \$6,522.17 shall be distributed to ERC as an Additional Settlement Payment  
15 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
16 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
17 allegedly caused by Defendant in this matter. These activities are detailed below and support  
18 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in  
19 dietary supplement products in California. ERC’s activities have had, and will continue to  
20 have, a direct and primary effect within the State of California because California consumers  
21 will be benefitted by the reduction and/or elimination of exposure to mercury and/or lead in  
22 dietary supplements and/or by providing clear and reasonable warnings to California  
23 consumers prior to ingestion of the products.

24 Based on a review of past years’ actual budgets, ERC is providing the following list of  
25 activities ERC engages in to protect California consumers through Proposition 65 citizen  
26 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
27 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing  
28 dietary supplement products that may contain mercury and/or lead and are sold to California



1 consumers. This work includes continued monitoring and enforcement of past consent  
2 judgments and settlements to ensure companies are in compliance with their obligations  
3 thereunder, with a specific focus on those judgments and settlements concerning mercury  
4 and/or lead. This work also includes investigation of new companies that ERC does not obtain  
5 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM  
6 (up to 10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products  
7 from companies, developing and maintaining a case file, testing products from these  
8 companies, providing the test results and supporting documentation to the companies, and  
9 offering guidance in warning or implementing a self-testing program for mercury and/or lead  
10 in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining  
11 ERC's "Got Lead?" Program which reduces the numbers of contaminated products that reach  
12 California consumers by providing access to free testing for lead in dietary supplement  
13 products (Products submitted to the program are screened for ingredients which are suspected  
14 to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified  
15 laboratory for testing, and the results shared with the consumer that submitted the product).

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

21 **4.5** \$10,200.00 shall be distributed to Lozeau Drury LLP as reimbursement of  
22 ERC's attorney fees, while \$12,291.02 shall be distributed to ERC for its in-house legal fees.  
23 Except as explicitly provided herein, each Party shall bear its own fees and costs.

24 **4.6** In the event that BiOptimizers fails to remit the Total Settlement Amount owed  
25 under Section 4 of this Consent Judgment on or before the Due Date, BiOptimizers shall be  
26 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
27 provide written notice of the delinquency to BiOptimizers via electronic mail. If BiOptimizers  
28 fails to deliver the Total Settlement Amount within five (5) days from the written notice,

1 provided the payment instructions and W-9 referenced in paragraph 4.1 are timely provided,  
2 the Total Settlement Amount shall accrue interest at the statutory judgment interest rate  
3 provided in the California Code of Civil Procedure section 685.010. Additionally,  
4 BiOptimizers agrees to pay ERC's reasonable attorney's fees and costs for any efforts to  
5 collect the payment due under this Consent Judgment.

6 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

28 ///

1     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
2     **JUDGMENT**

3             **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or  
4 terminate this Consent Judgment.

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

13     **7.     APPLICATION OF CONSENT JUDGMENT**

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

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

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

28             **8.2**     ERC, acting in the public interest, releases the Released Parties from any

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

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

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

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

27 ERC on behalf of itself only, and BiOptimizers on behalf of itself only, acknowledge and  
28 understand the significance and consequences of this specific waiver of California Civil Code

1 section 1542.

2 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
3 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
4 exposures to mercury and/or lead in the Covered Products as set forth in the Notice and  
5 Complaint.

6 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
7 environmental exposures arising under Proposition 65, nor shall it apply to any of  
8 BiOptimizers' products other than the Covered Products.

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

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

21 Chris Heptinstall, Executive Director, Environmental Research Center  
22 3111 Camino Del Rio North, Suite 400  
23 San Diego, CA 92108  
24 Ph: (619) 500-3090  
25 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

26 With a copy to:

27 RICHARD T. DRURY  
28 REBECCA L. DAVIS  
LOZEAU | DRURY LLP  
1939 Harrison Street, Suite 150  
Oakland, CA 94612  
Ph: 510-836-4200  
Email: [richard@lozeaudrury.com](mailto:richard@lozeaudrury.com) / [rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

1 **BIOPTIMIZERS USA, INC.:**

2 BiOptimizers USA, Inc.  
3 Attn: ANDY WILKINSON, COO  
4 5470 Kietzke Lane, Suite 300  
5 Reno, NV 89511  
6 Email: andy@biooptimizers.com

7 With a copy to:  
8 MICHAEL J. GLEASON  
9 HAHN LOESER & PARKS LLP  
10 One America Plaza, 600 West Broadway  
11 Suite 1500  
12 San Diego, CA 92101  
13 Ph: (619) 810-4310  
14 Email: mgleason@hahnlaw.com

15 **12. COURT APPROVAL**

16 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
17 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
18 Consent Judgment.

19 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
20 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
21 prior to the hearing on the motion.

22 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
23 void and have no force or effect.

24 **13. EXECUTION AND COUNTERPARTS**

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

28 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for  
each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms  
and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
5 equally in the preparation and drafting of this Consent Judgment.

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

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

11 **16. ENFORCEMENT**

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

20 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

27 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
28 authorized by the Party he or she represents to stipulate to this Consent Judgment.

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

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

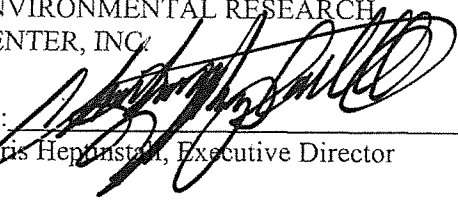
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 **IT IS SO STIPULATED:**

12  
13 Dated: 8/30/, 2022

ENVIRONMENTAL RESEARCH  
CENTER, INC.

14  
15 By:   
16 Chris Heppner, Executive Director

17  
18 Dated: August 30th, 2022

BIOOPTIMIZERS USA, INC.

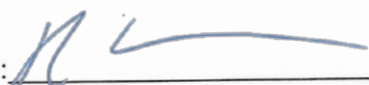
19  
20 Andy Wilkinson  
21 By: Andy Wilkinson  
22 Its: Chief Operating Officer  
23  
24  
25  
26  
27  
28



1 **APPROVED AS TO FORM:**

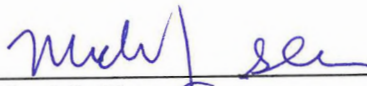
2  
3 Dated: 8/30, 2022

LOZEAU | DRURY LLP

4  
5 By:   
6 Richard T. Drury  
7 Brian B. Flynn  
8 Attorneys for Plaintiff Environmental  
9 Research Center, Inc.

10 Dated: 8-30, 2022

HAHN LOESER & PARKS LLP

11 By:   
12 Michael J. Gleason  
13 Attorney for Defendant BiOptimizers  
14 USA, Inc.

15  
16  
17 **ORDER AND JUDGMENT**

18  
19 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
20 approved and Judgment is hereby entered according to its terms.

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22  
23 Dated: \_\_\_\_\_, 2022

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

# **EXHIBIT A**



T 510.836.4200  
F 510.836.4205

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Oakland, CA 94612

www.lozeaudrury.com  
rebecca@lozeaudrury.com

**VIA CERTIFIED MAIL**

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5470 Kietzke Lane, Ste 300  
Reno, NV 89511

Current CEO or President  
biOptimizers USA, Inc.  
19655 E 35<sup>th</sup> Dr, #100  
Aurora, CO 80011

Jonn Morningstaur  
(Registered Agent for biOptimizers USA, Inc.)  
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May 26, 2022

Page 2

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**biOptimizers USA, Inc.**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

**1. biOptimizers Blood Sugar Breakthrough - Lead**

**2. biOptimizers Protein Breakthrough Plant-Based Protein Supplement Berry Bliss – Lead, Mercury**

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.

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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or mercury. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or mercury. Each of these ongoing violations has occurred on every day since May 26, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation.

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

May 26, 2022

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ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



A handwritten signature in blue ink, appearing to read 'Rebecca Davis', is positioned above a horizontal line. The signature is stylized and cursive.

Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to biOptimizers USA, Inc. and its Registered Agent 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  
biOptimizers USA, Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-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 chemicals that are 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: May 26, 2022

  
\_\_\_\_\_  
Rebecca Davis



**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 May 26, 2022, 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 CEO or President  
biOptimizers USA, Inc.  
5470 Kietzke Lane, Ste 300  
Reno, NV 89511

Jonn Morningstaur  
(Registered Agent for biOptimizers USA, Inc.)  
5470 Kietzke Lane, Ste 300  
Reno, NV 89511

Current CEO or President  
biOptimizers USA, Inc.  
19655 E 35<sup>th</sup> Dr, Ste 100  
Aurora, CO 80011

On May 26, 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  
Oakland, CA 94612-0550

On May 26, 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** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

May 26, 2022

Page 8

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

May 26, 2022

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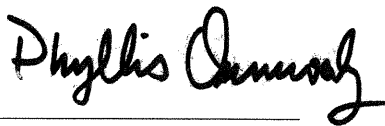
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On May 26, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto 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 May 26, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
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1200  
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## 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.