

1 WILLIAM F. WRAITH, SBN 185927  
2 WRAITH LAW  
3 25361 Commercentre Drive, Ste 150  
4 Lake Forest, CA 92630  
5 Tel: (949) 452-1234  
6 Email: bill@wraithlaw.com  
7 Attorney for Plaintiff Environmental Research Center, Inc.

8 WILLIAM K. KOSKA SBN 52540  
9 TYSON & MENDES LLP  
10 5661 LaJolla Boulevard  
11 San Diego, CA 92037  
12 Tel: (858) 459-4400  
13 Email: wkoska@tysonmendes.com  
14 Attorney for Defendant Cymbiotika LLC

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

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

20 **Plaintiff,**

21 **v.**

22 **CYMBIOTIKA LLC and DOES 1-100**

23 **Defendants.**

**CASE NO. 22CV023029**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 2, 2022

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On December 2, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”),  
26 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
27 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
28 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
 (“Proposition 65”), against Cymbiotika LLC (“Cymbiotika”) and Does 1-100. In this matter,

1 ERC alleges that two products manufactured, distributed, or sold by Cymbiotika contain lead,  
2 a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
3 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
4 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
5 Products”) are: Cymbiotika x Pürblack Shilajit Black Gold Complex Mineral Resin and  
6 Cymbiotika Bio-Charged Activated Charcoal Daily Detox Organic Lemon Crème.

7 **1.2** ERC and Cymbiotika are hereinafter referred to individually as a “Party” or  
8 collectively as the “Parties.”

9 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
10 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
11 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
12 and encouraging corporate responsibility.

13 **1.4** For purposes of this Stipulated Consent Judgment, the Parties agree that  
14 Cymbiotika is a business entity that creates, designs, distributes and sells dietary and nutritional  
15 supplements, has employed ten or more persons at all times relevant to this action, and qualifies as  
16 a “person in the course of doing business” within the meaning of Proposition 65. Cymbiotika  
17 distributes and/or sells the Covered Products, each of which are manufactured by a third party .

18 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
19 dated May 26, 2022 that was served on the California Attorney General, other public enforcers,  
20 and Cymbiotika (“Notice”). A true and correct copy of the 60-Day Notice dated May 26, 2022  
21 is attached hereto as *Exhibit A* and incorporated herein by reference. More than 60 days have  
22 passed since the Notice was served on the Attorney General, public enforcers, and Cymbiotika  
23 and no designated governmental entity has filed a complaint against Cymbiotika with regard to  
24 the Covered Products or the alleged violations.

25 **1.6** Cymbiotika denies all of the material allegations and claims in ERC’s Notice  
26 and Complaint , namely the allegations that use of the Covered Products by California  
27 consumers exposes them to lead without first receiving clear and reasonable warnings from  
28 Cymbiotika, which is in violation of California Health and Safety Code section 25249.6. To

1 date, no designated governmental entity has filed a complaint against Cymbiotika with regard  
2 to the Covered Products or the alleged violations.

3 **1.7** Cymbiotika further denies any and all allegations, claims or otherwise that the  
4 Covered Products pose any risk whatsoever to consumers' health. To the contrary, Cymbiotika  
5 contends that the Covered Products fall within California OEHHA's "safe harbor" and "No  
6 Significant Risk Levels." Nothing in this Stipulated Consent Judgment shall constitute or be  
7 construed as an admission by Cymbiotika or by any of its respective officers, directors,  
8 shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
9 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law,  
10 or violation of law.

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

18 **1.9** Except as expressly set forth herein, nothing in this Stipulated Consent  
19 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties  
20 may have in any current or future legal proceeding unrelated to these proceedings.

21 **1.10** The Effective Date of this Stipulated Consent Judgment is the date on which it  
22 is entered as a Judgment by this Court.

## 23 **2. JURISDICTION AND VENUE**

24 For purposes of this Stipulated Consent Judgment and any further court action that may  
25 become necessary to enforce this Stipulated Consent Judgment, the Parties stipulate that this  
26 Court has subject matter jurisdiction over the allegations of violations contained in the Complaint  
27 and personal jurisdiction over Cymbiotika as to the acts alleged in the Complaint, that venue is  
28 proper in Alameda County, and that this Court has jurisdiction to enter this Stipulated Consent

1 Judgment as a full and final resolution of all claims up through and including the Effective Date  
2 that were or could have been asserted in this action based on the facts alleged in the Notice and  
3 Complaint.

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

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

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

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

22 **3.2 Clear and Reasonable Warnings**

23 If Cymbiotika is ever required to provide a warning pursuant to Section 3.1, the following  
24 warning must be utilized (“Warning”):

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

27 If Cymbiotika is ever required to provide a warning pursuant to Section 3.1, Cymbiotika  
28 shall also comply with the following additional conditions of this Section 3.2:

1 (1) Cymbiotika shall use the phrase “cancer and” in the Warning if Cymbiotika has  
2 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as  
3 determined pursuant to the quality control methodology set forth in Section 3.4 or if Cymbiotika  
4 has reason to believe that another Proposition 65 chemical is present which may require a cancer  
5 warning.

6 (2) The Warning shall be securely affixed to or printed upon the label of each  
7 Covered Product and it must be set off from other surrounding information and enclosed in a  
8 box. In addition, for any Covered Product sold over the internet, the Warning shall appear on  
9 the checkout page when a California delivery address is indicated for any purchase of any  
10 Covered Product. An asterisk or other identifying method must be utilized to identify which  
11 products on the checkout page are subject to the Warning. In no event shall any internet or  
12 website Warning be contained in or made through a link.

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

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

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

### 26 **3.3 Conforming Covered Products**

27 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
28 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure

1 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
2 3.4, and that is not known by Cymbiotika to contain other chemicals that violate Proposition 65's  
3 safe harbor thresholds.

### 4 **3.4 Testing and Quality Control Methodology**

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

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

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

26 **3.4.4** All testing pursuant to this Stipulated Consent Judgment shall be  
27 performed by an independent third party laboratory certified by the California Environmental  
28 Laboratory Accreditation Program or an independent third-party laboratory that is registered

1 with the United States Food & Drug Administration.

2           **3.4.5** Nothing in this Stipulated Consent Judgment shall limit Cymbiotika’s  
3 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
4 including the raw materials used in their manufacture.

5           **3.4.6** Within thirty (30) days of ERC’s written request, Cymbiotika shall  
6 deliver lab reports obtained pursuant to Section 3.4 to ERC. Cymbiotika shall retain all test  
7 results and documentation for a period of five years from the date of each test.

8           **3.4.7** Prior to the date of this Stipulated Consent Judgment, Cymbiotika  
9 contracted with an independent third-party laboratory certified by the California Environmental  
10 Laboratory Accreditation Program, to independently test the Covered Products (and other  
11 Cymbiotika products) including to the provisions provided in this Section 3.4.

12   **4. SETTLEMENT PAYMENT**

13           **4.1** Without admitting any liability but denying the same, in full satisfaction of all  
14 potential civil penalties, additional settlement payments, attorney’s fees, and costs, Cymbiotika  
15 shall make a total payment of \$55,000 (“Total Settlement Amount”) to ERC within 5 days of  
16 the Effective Date (“Due Date”). Cymbiotika shall make this payment by wire transfer to  
17 ERC’s account, for which ERC will give Cymbiotika the necessary account information. The  
18 Total Settlement Amount shall be apportioned as follows:

19           **4.2** \$ 15,000.00 shall be considered a civil penalty pursuant to California Health and  
20 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$11,250.00) of the civil penalty to  
21 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
22 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
23 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,750.00) of the civil penalty.

24           **4.3** \$4,206.54 shall be distributed to ERC as reimbursement to ERC for reasonable  
25 costs incurred in bringing this action.

26           **4.4** \$10,634.39 shall be distributed to ERC as an Additional Settlement Payment  
27 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
28 and 3204. ERC will utilize the ASP for activities that address the same public harm as

1 allegedly caused by Defendant in this matter. These activities are detailed below and support  
2 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in  
3 dietary supplement products in California. ERC's activities have had, and will continue to  
4 have, a direct and primary effect within the State of California because California consumers  
5 will be benefitted by the reduction and/or elimination of exposure to lead in dietary  
6 supplements and/or by providing clear and reasonable warnings to California consumers prior  
7 to ingestion of the products.

8         Based on a review of past years' actual budgets, ERC is providing the following list of  
9 activities ERC engages in to protect California consumers through Proposition 65 citizen  
10 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
11 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing  
12 dietary supplement products that may contain lead and are sold to California consumers. This  
13 work includes continued monitoring and enforcement of past consent judgments and  
14 settlements to ensure companies are in compliance with their obligations thereunder, with a  
15 specific focus on those judgments and settlements concerning lead. This work also includes  
16 investigation of new companies that ERC does not obtain any recovery through settlement or  
17 judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (up to 10-20%): maintaining  
18 ERC's Voluntary Compliance Program by acquiring products from companies, developing and  
19 maintaining a case file, testing products from these companies, providing the test results and  
20 supporting documentation to the companies, and offering guidance in warning or implementing  
21 a self-testing program for lead in dietary supplement products; and (3) "GOT LEAD"  
22 PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers  
23 of contaminated products that reach California consumers by providing access to free testing  
24 for lead in dietary supplement products (Products submitted to the program are screened for  
25 ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
26 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
27 that submitted the product).

28         ERC shall be fully accountable in that it will maintain adequate records to document



1 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds  
2 are being spent only for the proper, designated purposes described in this Stipulated Consent  
3 Judgment. ERC shall provide the Attorney General, within thirty days of any request, copies of  
4 documentation demonstrating how such funds have been spent.

5 **4.5** \$8,190.00 shall be distributed to Wraith Law as reimbursement of ERC's  
6 attorney's fees, while \$16,969.07 shall be distributed to ERC for its in-house legal fees. Except  
7 as explicitly provided herein, each Party shall bear its own fees and costs.

8 **4.6** In the event that Cymbiotika fails to remit the Total Settlement Amount owed  
9 under Section 4 of this Stipulated Consent Judgment on or before the Due Date, Cymbiotika  
10 shall be deemed to be in material breach of its obligations under this Stipulated Consent  
11 Judgment. ERC shall provide written notice of the delinquency to Cymbiotika via electronic  
12 mail. If Cymbiotika fails to deliver the Total Settlement Amount within five (5) days from the  
13 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment  
14 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,  
15 Cymbiotika agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect  
16 the payment due under this Stipulated Consent Judgment.

17 **5. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

18 **5.1** This Stipulated Consent Judgment may be modified only as to injunctive terms  
19 (i) by written stipulation of the Parties and upon entry by the Court of a modified consent  
20 judgment or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court  
21 of a modified consent judgment.

22 **5.2** If Cymbiotika seeks to modify this Stipulated Consent Judgment under Section  
23 5.1, then Cymbiotika must provide written notice to ERC of its intent ("Notice of Intent"). If  
24 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then  
25 ERC must provide written notice to Cymbiotika within thirty (30) days of receiving the Notice  
26 of Intent. If ERC notifies Cymbiotika in a timely manner of ERC's intent to meet and confer,  
27 then the Parties shall meet and confer in good faith as required in this Section. The Parties  
28 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent

1 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
2 modification, ERC shall provide to Cymbiotika a written basis for its position. The Parties  
3 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
4 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
5 deadlines for the meet-and-confer period.

6 **5.3** In the event that Cymbiotika initiates or otherwise requests a modification under  
7 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
8 modification of the Stipulated Consent Judgment, Cymbiotika shall reimburse ERC its costs  
9 and reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
10 arguing the motion or application.

11 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF STIPULATED**  
12 **CONSENT JUDGMENT**

13 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
14 terminate this Stipulated Consent Judgment.

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

23 **7. APPLICATION OF STIPULATED CONSENT JUDGMENT**

24 This Stipulated Consent Judgment may apply to, be binding upon, and benefit the Parties  
25 and their respective officers, directors, shareholders, employees, agents, parent companies,  
26 subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers), distributors,  
27 wholesalers, retailers, predecessors, successors, and assigns. This Stipulated Consent Judgment  
28 shall have no application to any Covered Product that is distributed or sold exclusively outside the

1 State of California and that is not used by California consumers.

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

3 **8.1** This Stipulated Consent Judgment is a full, final, and binding resolution  
4 between ERC, on behalf of itself and in the public interest, and Cymbiotika and its respective  
5 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
6 suppliers, franchisees, licensees, customers (not including private label customers of  
7 Cymbiotika), distributors, wholesalers, retailers, and all other upstream and downstream  
8 entities in the distribution chain of any Covered Product, and the predecessors, successors, and  
9 assigns of any of them (collectively, “Released Parties”).

10 **8.2** ERC, acting in the public interest, releases the Released Parties from any  
11 and all claims for violations of Proposition 65 up through the Effective Date based on exposure  
12 to lead from the Covered Products as set forth in the Notice of Violation. ERC, on behalf of  
13 itself only, hereby fully releases and discharges the Released Parties from any and all claims,  
14 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
15 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
16 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
17 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
18 Products regarding lead to and including the Effective Date.

19 **8.3** ERC on its own behalf only, and Cymbiotika on its own behalf only, further  
20 waive and release any and all claims they may have against each other for all actions or  
21 statements made or undertaken in the course of seeking or opposing enforcement of  
22 Proposition 65 in connection with the Notice and Complaint up through and including the  
23 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s  
24 right to seek to enforce the terms of this Stipulated Consent Judgment.

25 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
27 discovered. ERC on behalf of itself only, and Cymbiotika on behalf of itself only, acknowledge  
28 that this Stipulated Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.  
2 ERC and Cymbiotika acknowledge that the claims released in Sections 8.2 and 8.3 above may  
3 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
4 such unknown claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, and Cymbiotika on behalf of itself only, acknowledge and  
12 understand the significance and consequences of this specific waiver of California Civil Code  
13 section 1542.

14 **8.5** Compliance with the terms of this Stipulated Consent Judgment shall be deemed  
15 to constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
16 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

17 **8.6** Nothing in this Stipulated Consent Judgment is intended to apply to any  
18 occupational or environmental exposures arising under Proposition 65, nor shall it apply to any  
19 of Cymbiotika's products other than the Covered Products.

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

19 In the event that any of the provisions of this Stipulated Consent Judgment are held by a  
20 court to be unenforceable, the validity of the remaining enforceable provisions shall not be  
21 adversely affected.

## 22 **10. GOVERNING LAW**

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

## 25 **11. PROVISION OF NOTICE**

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

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

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

7 With a copy to:

8 WILLIAM F. WRAITH  
9 WRAITH LAW  
10 25361 Commercentre Drive, Ste 150  
11 Lake Forest, CA 92630  
12 Tel: (949) 452-1234  
13 Email: bill@wraithlaw.com

14 **FOR CYMBIOTIKA LLC:**

15 Adam Gislason, Esq.  
16 Chief Strategy Officer & General Counsel  
17 Cymbiotika LLC  
18 5825 Oberlin Lane, Suite #05  
19 San Diego, CA 92121  
20 Email: adam@cymbiotika.com

21 With a copy to:

22 WILLIAM K. KOSKA  
23 TYSON & MENDES LLP  
24 5661 LaJolla Boulevard  
25 San Diego, CA 92037  
26 Tel: (858) 459-4400  
27 Email: wkoska@tysonmendes.com

28 **12. COURT APPROVAL**

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

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

12.3 If this Stipulated Stipulated Consent Judgment is not approved by the Court, it

1 shall be void and have no force or effect.

2 **13. EXECUTION AND COUNTERPARTS**

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

6 **14. DRAFTING**

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

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

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

22 **16. ENFORCEMENT**

23 Either party may, by motion or order to show cause before the Superior Court of Alameda  
24 County, enforce the terms and conditions contained in this Consent Judgment. Each party  
25 may seek whatever fines, costs, penalties, or remedies against the other party to the extent they  
26 are provided by law for failure to comply with the Consent Judgment. Such relief shall not be  
27 limited to enforcement of this Consent Judgment, but each party may seek in another action  
28 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with

1 Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Stipulated Consent Judgment contains the sole and entire agreement and  
4 understanding of the Parties with respect to the entire subject matter herein, including any and  
5 all prior discussions, negotiations, commitments, and understandings related thereto. No  
6 representations, oral or otherwise, express or implied, other than those contained herein have  
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Stipulated Consent Judgment certifies that he or she is  
10 fully authorized by the Party he or she represents to stipulate to this Consent Judgment.

11 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
12 **CONSENT JUDGMENT**

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

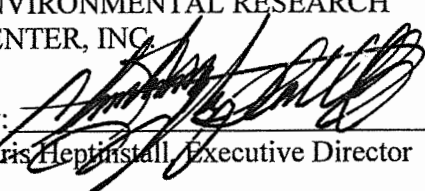
16 (1) Find that the terms and provisions of this Stipulated Consent Judgment represent a  
17 fair and equitable settlement of all matters raised by the allegations of the Complaint that the  
18 matter has been diligently prosecuted, and that the public interest is served by such settlement; and

19 (2) Make the findings pursuant to California Health and Safety Code section  
20 25249.7(f)(4), approve the Settlement, and approve this Stipulated Consent Judgment.

21 **IT IS SO STIPULATED:**

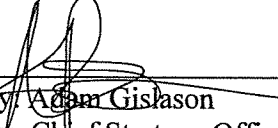
22 Dated: 12/5/, 2022

ENVIRONMENTAL RESEARCH  
CENTER, INC.

23  
24 By:   
25 Chris Heptinstall, Executive Director  
26  
27  
28

1 Dated: December 2, 2022


CYMBIOTIKA LLC

2  
3 By:   
4 Its: Chief Strategy Officer & General  
5 Counsel

6 **APPROVED AS TO FORM:**

7  
8 Dated: December 5, 2022

WRAITH LAW

9 By:   
10 William F. Wraith  
11 Attorney for Plaintiff Environmental  
12 Research Center, Inc.

13 Dated: \_\_\_\_\_, 2022

TYSON & MENDES LLP

14  
15 By: \_\_\_\_\_  
16 William K. Koska  
17 Attorney for Cymbiotika LLC

18  
19 **ORDER AND JUDGMENT**

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

22 IT IS SO ORDERED, ADJUDGED AND DECREED.


23 Dated: \_\_\_\_\_, 2023

24 \_\_\_\_\_  
25 Judge of the Superior Court



1 Dated: December 2, 2022

CYMBIOTIKA LLC

2  
3   
4 By: Adam Gislason  
5 Its: Chief Strategy Officer & General  
6 Counsel

7 **APPROVED AS TO FORM:**

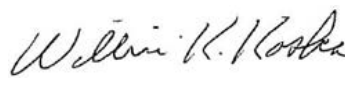
8 Dated: \_\_\_\_\_, 2022

WRAITH LAW

9  
10 By: \_\_\_\_\_  
11 William F. Wraith  
12 Attorney for Plaintiff Environmental  
13 Research Center, Inc.

14 Dated: December 2,, 2022

TYSON & MENDES LLP

15 By:   
16 \_\_\_\_\_  
17 William K. Koska  
18 Attorney for Cymbiotika LLC

19 **ORDER AND JUDGMENT**

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

22 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: \_\_\_\_\_, 2023

24 \_\_\_\_\_  
25 Judge of the Superior Court

# **EXHIBIT A**

# **WRAITH LAW**

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

May 26, 2022

## **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 products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

**Cymbiotika LLC**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. Cymbiotika x Pürblack Shilajit Black Gold Complex Mineral Resin - Lead**
- 2. Cymbiotika Bio-Charged Activated Charcoal Daily Detox Organic Lemon Crème - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 26, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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 Cymbiotika LLC 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 Cymbiotika LLC**

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: May 26, 2022



---

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 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 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  
Cymbiotika LLC  
3394 Carmel Mtn Rd, Ste 140  
San Diego, CA 92121

Northwest Registered Agent, Inc.  
(Registered Agent for Cymbiotika LLC)  
2108 N St, Ste N  
Sacramento, CA 95816

Northwest Registered Agent, LLC  
(Registered Agent for Cymbiotika LLC)  
401 Ryland St, Ste 200A  
Reno, NV 89502

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

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

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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

May 26, 2022

Page 5

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

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

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

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

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

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

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

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

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

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

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

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

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

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

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

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

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

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

May 26, 2022

Page 6

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org


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

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

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

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

Executed on May 26, 2022, in Fort Oglethorpe, Georgia.

  
Phyllis L. Inwoody



**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## APPENDIX A

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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