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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

15 **ENVIRONMENTAL RESEARCH**
16 **CENTER, INC., a California non-profit**
17 **corporation**

18 **Plaintiff,**

19 **vs.**

20 **VITACUP, INC. and DOES 1-100**

21 **Defendants.**

CASE NO. 22CV021764

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 15, 2022

Trial Date: None set

22
23
24 **1. INTRODUCTION**

25 **1.1** On November 15, 2022, Plaintiff Environmental Research Center, Inc.
26 (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this
27 action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the
28 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5

1 *et seq.* (“Proposition 65”), against VitaCup, Inc. (“VitaCup”) and Does 1-100. In this action,
2 ERC alleges that beverage products manufactured, distributed, or sold by VitaCup contain
3 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
4 consumers to this chemical at a level requiring a Proposition 65 warning. These products
5 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
6 Products”) are: (1) Vitacup Oat Milk Creamer Mocha Flavored, (2) Vitacup Oat Milk Creamer
7 Vanilla Flavored, (3) Vitacup Keto + Collagen Creamer Vanilla Flavored, (4) Vitacup Keto
8 Max Instant Coffee, Upgraded Dark Roast, (5) Vitacup Oat Milk Latte Vanilla Flavored, (6)
9 Vitacup Oat Milk Latte Mocha Flavored, and (7) Vitacup Keto + Collagen Creamer Mocha
10 Flavored.

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

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

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

21 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
22 dated June 23, 2022 and July 6, 2022 that were served on the California Attorney General,
23 other public enforcers, and VitaCup (“Notices”). True and correct copies of the 60-Day Notices
24 dated June 23, 2022 and July 6, 2022 are attached hereto as *Exhibits A* and *B* and each is
25 incorporated herein by reference. More than 60 days have passed since the Notices were served
26 on the Attorney General, public enforcers, and VitaCup and no designated governmental entity
27 has filed a Complaint against VitaCup with regard to the Covered Products or the alleged
28 violations.

1 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
2 California consumers exposes them to lead without first receiving clear and reasonable
3 warnings from VitaCup, which is in violation of California Health and Safety Code section
4 25249.6. VitaCup denies all the allegations contained in the Notices and Complaint and
5 maintains that its products are in full compliance with California Health and Safety Code
6 section 25249.6.

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

14 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
15 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
16 any current or future legal proceeding unrelated to these proceedings.

17 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
18 as a Judgment by this Court.

19 **2. JURISDICTION AND VENUE**

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

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

28 **3.1** Beginning on the Effective Date, VitaCup shall be permanently enjoined from

1 manufacturing for sale in the State of California, “Distributing into the State of California,” or
2 directly selling in the State of California, any Covered Product that exposes a person to a
3 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the
4 warning requirements under Section 3.2.

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

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

16 **3.2**  **Clear and Reasonable Warnings**

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

19 **OPTION 1:**

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

23 OR

24 **OPTION 2:**



26 **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food.

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

1 pursuant to the quality control methodology set forth in Section 3.4 or if VitaCup has reason to
2 believe that another Proposition 65 chemical is present which may require a cancer warning. For
3 the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral
4 triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no
5 smaller than the height of the word “**WARNING.**” Where the label for the product is not printed
6 using the color yellow, the symbol may be printed in black and white. As identified in the brackets
7 in the Option 1 Warning, the Option 1 Warning shall appropriately reflect whether there is lead or
8 another chemical that requires a Proposition 65 warning present in the Covered Product.

9 The Warning shall be securely affixed to or printed upon the label of each Covered
10 Product, and it must be set off from other surrounding information and enclosed in a box. In
11 addition, for any Covered Product sold over the internet, the Warning must be provided by
12 including either the Warning or a clearly marked hyperlink using the word “**WARNING**” in
13 all capital and bold letters on the Covered Product’s primary product display page, or by
14 otherwise prominently displaying the Warning to the purchaser prior to completing the
15 purchase. If the Warning is provided using the Option 2 Warning, the warning provided on the
16 website may use the same content. If the Warning is provided on the checkout page, an asterisk
17 or other identifying method must be utilized to identify which products on the checkout page
18 are subject to the Warning. If the Warning is provided via a clearly marked hyperlink, the
19 hyperlink must go directly to a page prominently displaying the Warning without content that
20 detracts from the Warning. A Warning is not prominently displayed if the purchaser has to
21 search for it in the general content of the website.

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

28 VitaCup must display the above Warning with such conspicuousness, as compared with

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

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

7 **3.3 Conforming Covered Products**

8 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
9 Level” is no greater than 0.5 micrograms of lead per day and that is not known by VitaCup to
10 contain other chemicals that violate Proposition 65’s safe harbor thresholds.

11 **3.4 Testing and Quality Control Methodology**

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

24 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
25 lead detection result of the three (3) randomly selected samples of the Covered Products will
26 be controlling.

27 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
28 laboratory method that complies with the performance and quality control factors appropriate

1 for the method used, including limit of detection and limit of quantification, sensitivity,
2 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
3 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
4 mg/kg.

5 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
6 independent third party laboratory certified by the California Environmental Laboratory
7 Accreditation Program or an independent third-party laboratory that is registered with the
8 United States Food & Drug Administration.

9 **3.4.5** Nothing in this Consent Judgment shall limit VitaCup’s ability to
10 conduct, or require that others conduct, additional testing of the Covered Products, including
11 the raw materials used in their manufacture.

12 **3.4.6** Within thirty (30) days of ERC’s written request, VitaCup shall deliver
13 lab reports obtained pursuant to Section 3.4 to ERC. VitaCup shall retain all test results and
14 documentation for a period of three (3) years from the date of each test.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement
17 payments, attorney’s fees, and costs, VitaCup shall make a total payment of \$45,000.00 (“Total
18 Settlement Amount”) to ERC within 10 days of the Effective Date (“Due Date”). VitaCup shall
19 make this payment by wire transfer to ERC’s account, for which ERC will give VitaCup the
20 necessary account information in writing at least five (5) days before the payment due date.

21 The Total Settlement Amount shall be apportioned as follows:

22 **4.2** \$5,500.00 shall be considered a civil penalty pursuant to California Health and
23 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$4,125.00) of the civil penalty to the
24 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
25 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
26 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,375.00) of the civil penalty.

27 **4.3** \$3,015.88 shall be distributed to ERC as reimbursement to ERC for reasonable
28 costs incurred in bringing this action.

1 **4.4** \$4,053.58 shall be distributed to ERC as an Additional Settlement Payment
2 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
3 and 3204. ERC will utilize the ASP for activities that address the same public harm as
4 allegedly caused by Defendant in this matter. These activities are detailed below and support
5 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
6 dietary supplement products in California. ERC’s activities have had, and will continue to
7 have, a direct and primary effect within the State of California because California consumers
8 will be benefitted by the reduction and/or elimination of exposure to lead in dietary
9 supplements and/or by providing clear and reasonable warnings to California consumers prior
10 to ingestion of the products.

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

1 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
2 that submitted the product).

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

8 **4.5** \$10,860.00 shall be distributed to Aqua Terra Aeris Law Group as
9 reimbursement of ERC's attorney's fees, while \$21,570.54 shall be distributed to ERC for its
10 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
11 costs.

12 **4.6** In the event that VitaCup fails to remit the Total Settlement Amount owed
13 under Section 4 of this Consent Judgment on or before the Due Date, VitaCup shall be deemed
14 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
15 written notice of the delinquency to VitaCup via electronic mail. If VitaCup fails to deliver the
16 Total Settlement Amount within five (5) days from the written notice, the Total Settlement
17 Amount shall accrue interest at the statutory judgment interest rate provided in the California
18 Code of Civil Procedure section 685.010. Additionally, VitaCup agrees to pay ERC's
19 reasonable attorney's fees and costs for any efforts to collect the payment due under this
20 Consent Judgment. Should ERC fail to provide written payment instructions in the time period
21 specified in Section 4.1, VitaCup shall be excused from payment of the Total Settlement until
22 five days (5) after ERC transmits the payment instructions in writing to VitaCup.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
25 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
26 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
27 modified consent judgment.

28 **5.2** If VitaCup seeks to modify this Consent Judgment under Section 5.1, then

1 VitaCup must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to
2 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
3 provide written notice to VitaCup within thirty (30) days of receiving the Notice of Intent. If
4 ERC notifies VitaCup in a timely manner of ERC’s intent to meet and confer, then the Parties
5 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
6 or via telephone within thirty (30) days of ERC’s notification of its intent to meet and confer.
7 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall
8 provide to VitaCup a written basis for its position. The Parties shall continue to meet and
9 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
10 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
11 confer period.

12 **5.3** In the event that VitaCup initiates or otherwise requests a modification under
13 Section 5.1, and the meet and confer process leads to a joint motion or application for a
14 modification of the Consent Judgment, VitaCup shall reimburse ERC its costs and reasonable
15 attorney’s fees for the time spent for the process of filing and arguing the motion or
16 application.

17 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
18 **JUDGMENT**

19 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
20 terminate this Consent Judgment.

21 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
22 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
23 inform VitaCup in a reasonably prompt manner of its test results, but in no event more than six
24 (6) months after ERC receives its test results, including information sufficient to permit
25 VitaCup to identify the Covered Products at issue. VitaCup shall, within forty-five (45) days
26 following such notice, provide ERC with testing information, from an independent third-party
27 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating VitaCup’s
28 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter in

1 good faith for at least thirty (30) days before resorting to Court to enforce the Consent
2 Judgment.

3 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

28 **8.3** ERC on its own behalf only, and VitaCup on its own behalf only, further waive

1 and release any and all claims they may have against each other for all actions or statements
2 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
3 connection with the Notices and Complaint up through and including the Effective Date,
4 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
5 enforce the terms of this Consent Judgment.

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

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

18 ERC on behalf of itself only, and VitaCup on behalf of itself only, acknowledge and
19 understand the significance and consequences of this specific waiver of California Civil Code
20 Section 1542.

21 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
22 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
23 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

24 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
25 environmental exposures arising under Proposition 65, nor shall it apply to any of VitaCup's
26 products other than the Covered Products.

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

28 In the event that any of the provisions of this Consent Judgment are held by a court to be

1 unenforceable, the validity of the remaining enforceable provisions shall not be adversely
2 affected.

3 **10. GOVERNING LAW**

4 **10.1** The terms and conditions of this Consent Judgment shall be governed by and
5 construed in accordance with the laws of the State of California.

6 **10.2** In the event that Proposition 65 is repealed, preempted, or is otherwise
7 specifically rendered inapplicable to the Covered Products by a decision of the California
8 Supreme Court, or if any of the provisions of this Consent Judgment are specifically rendered
9 inapplicable or no longer required as to the Covered Products as a result of any such repeal or
10 preemption or decision of the California Supreme Court, then VitaCup may provide written
11 notice to ERC of any asserted change in law, and shall have no further obligations pursuant to
12 this Consent Judgment with respect to, and to the extent that, the Covered Products are so
13 affected.

14 **11. PROVISION OF NOTICE**

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

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

19 Chris Heptinstall, Executive Director, Environmental Research Center
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108
22 Ph: (619) 500-3090
23 Email: chris.heptinstall@erc501c3.org

24 With a copy to:

25 Matthew C. Maclear
26 Anthony M. Barnes
27 Aqua Terra Aeris Law Group
28 4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
Email: mcm@atalawgroup.com
amb@atalawgroup.com

1 **VITACUP, INC.**

2 Ryan Savage
3 Chief Operating Officer
4 VitaCup, Inc.
5 13750 Danielson Street, Suite B
6 Poway, CA 92064
7 Email: _____

8 With a copy to:

9 Hazel Ocampo
10 Greenberg Traurig LLP
11 18565 Jamboree Road, Suite 500
12 Irvine, CA 92612
13 Telephone: (949) 732-6545
14 Email: ocampoh@gtlaw.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 and shall provide the Consent Judgment to the Attorney General
18 for review at least forty-five (45) days prior to the hearing, or at such other time as the
19 Attorney General may permit or require. The Parties shall use their best efforts to support entry
20 of this Consent Judgment.

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

24 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
25 void and have no force or effect.

26 **13. EXECUTION AND COUNTERPARTS**

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

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

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

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

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

12 **16. ENFORCEMENT**

13 Both Parties may, by motion or order to show cause before the Superior Court of
14 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any
15 action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
16 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

17 **17. ATTORNEY FEES**

18 Except as specifically provided in the Consent Judgment, each Party shall bear its own
19 attorneys' fees and costs in connection with the claims resolved in this Consent Judgment and its
20 subsequent enforcement.

21 **18. ENTIRE AGREEMENT, AUTHORIZATION**

22 **18.1** This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter herein, including any and all prior
24 discussions, negotiations, commitments, and understandings related thereto. No representations,
25 oral or otherwise, express or implied, other than those contained herein have been made by any
26 Party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
27 deemed to exist or to bind any Party.

28 **18.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized

1 by the Party he or she represents to stipulate to this Consent Judgment.

2 **19. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
3 **CONSENT JUDGMENT**

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

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

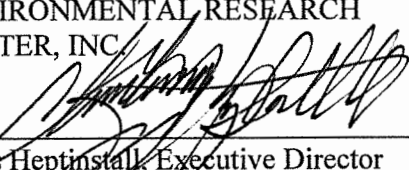
10 (2) Make the findings pursuant to California Health and Safety Code section
11 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

15 **IT IS SO STIPULATED:**

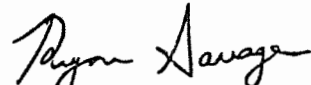
16
17 Dated: 2/20/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

18
19 By: 
20 Chris Heptinstall, Executive Director

21 Dated: February 17, 2023


VITACUP, INC.

22
23 
24 By: Ryan Savage
25 Its: COO

1 **APPROVED AS TO FORM:**


2
3 Dated: February 20, 2023

AQUA TERRA AERIS LAW GROUP

4
5 By: 
6 Matthew C. Maclear
7 Anthony M. Barnes
8 Attorneys for Environmental Research
Center, Inc.

9 Dated: February 20, 2023

GREENBERG TRAURIG LLP

10
11 By: 
12 Hazel Ocampo
13 Attorney for Defendant VitaCup, Inc.

14 **ORDER AND JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18
19 Dated: _____, 2023

Judge of the Superior Court

EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

June 23, 2022

**NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

VitaCup, Inc.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 23, 2022
Page 2

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. **Vitacup Oat Milk Creamer Mocha Flavored - Lead**
2. **Vitacup Oat Milk Creamer Vanilla Flavored - Lead**
3. **Vitacup Keto + Collagen Creamer Vanilla Flavored - 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 June 23, 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.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 23, 2022
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to VitaCup, Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 23, 2022
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by VitaCup, Inc.
I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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.

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large initial "M".

Dated: June 23, 2022

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 June 23, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
VitaCup, Inc.
10620 Treena St, Ste 250
San Diego, CA 92131

Paracorp Incorporated
(Registered Agent for VitaCup, Inc.)
2804 Gateway Oaks Dr, #100
Sacramento, CA 95833

Current President or CEO
VitaCup, Inc.
10620 Treena St, Ste 100
San Diego, CA 92131

Paracorp Incorporated
(Registered Agent for VitaCup, Inc.)
2140 S Dupont Hwy Camden, DE
19934

On June 23, 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 June 23, 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 Violation of California Health & Safety Code §25249.5 *et seq.*
June 23, 2022
Page 6

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

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

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
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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
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300 N Flower St
Santa Ana, CA 92703
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney
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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
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3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

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

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 7

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, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney
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DAConsumer.Environmental@sjcda.org

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San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

Nora V. Frimann, City Attorney
San Jose City Attorney
200 E. Santa Clara Street, 16th 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
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600 Administration Dr
Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

Phillip J. Cline, District Attorney
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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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 8

On June 23, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 June 23, 2022, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a horizontal line underneath the name.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

July 6, 2022

**NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

VitaCup, Inc.



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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. **Vitacup Keto Max Instant Coffee, Upgraded Dark Roast - Lead**
2. **Vitacup Oat Milk Latte Vanilla Flavored - Lead**
3. **Vitacup Oat Milk Latte Mocha Flavored - Lead**
4. **Vitacup Keto + Collagen Creamer Mocha Flavored - 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 July 6, 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.



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ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to VitaCup, Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by VitaCup, Inc.

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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.

A handwritten signature in cursive script that reads "Matthew Maclear".

Dated: July 6, 2022

Matthew Maclear



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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
VitaCup, Inc.
10620 Treena St, Ste 250
San Diego, CA 92131

Paracorp Incorporated
(Registered Agent for VitaCup, Inc.)
2804 Gateway Oaks Dr, #100
Sacramento, CA 95833

Current President or CEO
VitaCup, Inc.
10620 Treena St, Ste 100
San Diego, CA 92131

Paracorp Incorporated
(Registered Agent for VitaCup, Inc.)
2140 S Dupont Hwy
Camden, DE 19934

On July 6, 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 July 6, 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



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Page 6

Stacey Grassini, Deputy District Attorney
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Lisa A. Smittcamp, District Attorney
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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney
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inyoda@inyocounty.us

Michelle Latimer, Program Coordinator
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mcda@mariposacounty.org

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Prop65@countyofmerced.com

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San Diego City Attorney
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CityAttyProp65@sandiego.gov



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Alexandra Grayner, Assistant District Attorney
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Proposition65notices@sanjoseca.gov

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Prop65DA@santacruzcounty.us

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Jeannie.Barnes@sonoma-county.org

Phillip J. Cline, District Attorney
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Prop65@co.tulare.ca.us

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

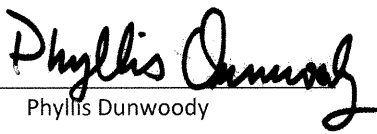
Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org



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On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 July 6, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody



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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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