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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 **VEJO, INC. and DOES 1-100**

21 **Defendants.**

CASE NO. 23CV025549

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 11, 2023

Trial Date: None set

22
23 **1. INTRODUCTION**

24 **1.1** On January 11, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”), a
25 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
26 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
27 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
28 (“Proposition 65”), against Vejo, Inc. (“Vejo”) and Does 1-100. In this action, ERC alleges

1 that a number of products manufactured, distributed, or sold by Vejo contain lead and/or
2 cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and
3 expose consumers to these chemicals at a level requiring a Proposition 65 warning. These
4 products (referred to hereinafter individually as a “Covered Product” or collectively as
5 “Covered Products”) are: (1) Vejo Piña Greens Smoothie Blend (lead), (2) Vejo Mood Boost
6 Banana & Mango Functional Blend (lead), (3) Vejo Banana Almond With Plant-Based Protein
7 Blend (lead), (4) Vejo Spiced Chocolate (lead, cadmium), (5) Vejo Tart Berry (lead), and (6)
8 Vejo Plant-Based Protein Natural Chocolate Flavor Protein Blend (lead).

9 **1.2** ERC and Vejo are hereinafter referred to individually as a “Party” or collectively
10 as the “Parties.”

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

15 **1.4** For purposes of this Consent Judgment, the Parties agree that Vejo is a business
16 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a
17 “person in the course of doing business” within the meaning of Proposition 65. Vejo
18 manufactures, distributes, and/or sells the Covered Products.

19 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
20 dated July 8, 2022 and July 21, 2022 that were served on the California Attorney General,
21 other public enforcers, and Vejo (“Notices”). True and correct copies of the 60-Day Notices
22 dated July 8, 2022 and July 21, 2022 are attached hereto as **Exhibits A** and **B** and incorporated
23 herein by reference. More than 60 days have passed since the Notices were served on the
24 Attorney General, public enforcers, and Vejo and no designated governmental entity has filed a
25 Complaint against Vejo with regard to the Covered Products or the alleged violations.

26 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
27 California consumers exposes them to lead and/or cadmium without first receiving clear and
28 reasonable warnings from Vejo, which is in violation of California Health and Safety Code

1 section 25249.6. Vejo denies all material allegations contained in the Notices and Complaint.

2 **1.7** The Parties have entered into this Consent Judgment in order to settle,
3 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
4 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
5 or be construed as an admission by any of the Parties or by any of their respective officers,
6 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
8 issue of law, or violation of law.

9 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
11 any current or future legal proceeding unrelated to these proceedings.

12 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
13 a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

15 For purposes of this Consent Judgment and any further court action that may become
16 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
17 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
18 over Vejo as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
19 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
20 claims up through and including the Effective Date, or Compliance Date, as that term is defined in
21 Section 3.1, below, if applicable, that were or could have been asserted in this action based on the
22 facts alleged in the Notices and Complaint.

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

24 **3.1** Beginning on the Effective Date (for internet warnings as described in Section
25 3.2) or thirty (30) days after the Effective Date (the “Compliance Date”) (for all other warning
26 methods described in Section 3.2), as applicable, Vejo shall be permanently enjoined from
27 manufacturing for sale in the State of California, “Distributing into the State of California,” or
28 directly selling in the State of California, any Covered Product that exposes a person to a

1 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or a “Daily
2 Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it meets
3 the warning requirements under Section 3.2.

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

8 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
9 Level” shall be measured in micrograms, and shall be calculated using the following formula:
10 micrograms of lead per gram of product, multiplied by grams of product per serving of the
11 product (using the largest serving size appearing on the product label), multiplied by servings
12 of the product per day (using the largest number of recommended daily servings appearing on
13 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section
14 3.1.4, amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label
15 contains no recommended daily servings, then the number of recommended daily servings
16 shall be one.

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

25 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product, Vejo
26 shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in the
27 ingredients listed in **Table 1** that are contained in that Covered Product under the following
28 conditions: For the first three (3) years that Vejo claims entitlement to a “naturally occurring”

1 allowance, Vejo shall provide ERC with the following information: (a) Vejo must produce to
 2 ERC a written list of each ingredient in the Covered Product, and the amount, measured in grams,
 3 of each such ingredient contained therein for which a “naturally occurring” allowance is claimed;
 4 (b) Vejo must provide ERC with documentation of laboratory testing, conducted during the year
 5 for which the “naturally occurring” allowance is claimed, that complies with Sections 3.4.3
 6 through 3.4.4 and that shows the amount of lead, if any, contained in each ingredient listed in
 7 **Table 1** that is contained in the Covered Product and for which Vejo intends to deduct “naturally
 8 occurring” lead; (c) if the laboratory testing reveals the presence of lead in any of the ingredients
 9 listed in **Table 1** that are contained in the Covered Product, Vejo shall be entitled to deduct the
 10 amount of lead contained in each such ingredient, up to the full amount of the allowance as shown
 11 in **Table 1** but not to exceed the total amount of lead actually contained in that ingredient in the
 12 Covered Product; and (d) if the Covered Product does not contain any of the ingredients listed in
 13 **Table 1**, Vejo shall not be entitled to a deduction for “naturally occurring” lead in the Covered
 14 Product. The information required by Sections 3.1.4(a) and (b) shall be provided to ERC within
 15 thirty (30) days of the anniversary of the Effective Date and annually thereafter, for the first three
 16 (3) years that Vejo shall claim entitlement to the “naturally occurring” allowance. After the first
 17 (3) three years, ERC may request this information, no more than once per year thereafter, and
 18 Vejo shall provide the requested information to ERC within thirty (30) days of such request.
 19 ERC shall keep the information provided by Vejo under Section 3.1.4(a) strictly confidential as
 20 the specifications and recipes for the Covered Products, including quantities of ingredients, are
 21 proprietary trade secrets.

22 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 1 microgram/gram
Chocolate Liquor	Up to 1 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram
Calcium (elemental)	Up to 0.8 micrograms/gram

1	Ferrous Fumarate	Up to 0.4 micrograms/gram
2	Zinc Oxide	Up to 8.0 micrograms/gram
3	Magnesium Oxide	Up to 0.4 micrograms/gram
4	Magnesium Carbonate	Up to 0.332 micrograms/gram
5	Magnesium Hydroxide	Up to 0.4 micrograms/gram
6	Zinc Gluconate	Up to 0.8 micrograms/gram
7	Potassium Chloride	Up to 1.1 micrograms/gram

9 **3.1.5** So long as Vejo can provide documentation, if requested in writing by
10 ERC, Covered Products shipped, sold, or Distributed into the State of California by Vejo prior
11 to the Effective Date, or Compliance Date if applicable, are not bound by the injunctive terms
12 set forth in this Section 3, including but not limited to the Daily Lead Exposure Level, Daily
13 Cadmium Exposure Level, and warning and testing requirements, and are instead permitted to
14 be sold as is to California consumers and are expressly released by Section 8 of this Consent
15 Judgment.

16 **3.2 Clear and Reasonable Warnings**

17 If Vejo 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]
21 [and]][cadmium] which is [are] known to the State of California to cause [cancer and] birth
22 defects or other reproductive harm. For more information go to
23 www.P65Warnings.ca.gov/food.

23 OR

24 **OPTION 2:**

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

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

1 the quality control methodology set forth in Section 3.4 or if Vejo has reason to believe that
2 another Proposition 65 chemical is present which may require a cancer warning. As identified in
3 the brackets, the warning shall reflect at least one chemical present in each of the Covered
4 Products. For the Option 2 Warning, the entire Warning must be in a type size no smaller than the
5 largest type size used for other consumer information on the product. In no case shall the
6 Warning appear in a type size smaller than 6-point type. Further, for Option 2, a symbol
7 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline
8 shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
9 word “**WARNING.**” Where the sign, label or shelf tag for the product is not printed using the
10 color yellow, the symbol may be printed in black and white.

11 The Warning shall be provided through one of the following methods: (1) a product-
12 specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at
13 each point of display of the product; or (2) a product-specific warning provided via any
14 electronic device or process that automatically provides the warning to the purchaser prior to or
15 during the purchase of the consumer product, without requiring the purchaser to seek out the
16 warning; or (3) a warning on the label that is securely affixed to or printed upon the label and
17 complies with this Section 3.2. If the Warning is printed upon the label of the Covered
18 Product, it must be set off from other surrounding information and enclosed in a box. In
19 addition, for any Covered Product sold over the internet, the Warning shall appear prior to
20 checkout on the primary product page, or as a pop-up when a California zip code is input into
21 the shipping instructions, or on the checkout page when a California delivery address is
22 indicated for any purchase of any Covered Product. Where a Warning subject to this section is
23 provided solely on the checkout page, an asterisk or other identifying method must be utilized
24 to identify which products on the checkout page are subject to the Warning. The Warning may
25 be provided with a conspicuous hyperlink stating “**WARNING**” in all capital and bold letters
26 so long as the hyperlink goes directly to a page prominently displaying the Warning without
27 content that detracts from the Warning. Given Vejo’s lack of control over third-party websites,
28 the online warning requirements expressed in this Section apply only to Covered Products sold

1 through Vejo’s website. However, if a Covered Product is being sold by an online third-party
2 seller, known to and authorized to sell such Covered Product by Vejo, and Vejo cannot itself
3 post the warning on the online third-party seller’s website because Vejo lacks control over such
4 online third-party seller’s website, then Vejo must notify the online third-party seller of its duty
5 to provide an internet warning as part of the condition of sale of the Covered Product. Vejo
6 may comply with this obligation to notify online third-party sellers by complying with 27
7 C.C.R. § 25600.2 (2023) and providing the information required by 27 C.C.R. § 25600.2
8 (2023) to any such online third-party seller that is subject to California Health and Safety Code
9 § 25249.6. In all cases, a warning is not prominently displayed if the purchaser must search for
10 it in the general content of the website.

11 With respect to any downstream reseller customers of Vejo who are subject to
12 Proposition 65, Vejo may give written notice, including labels, labeling, shelf signs, or tags
13 bearing the Warning, and all other necessary warning materials, to the authorized agent of such
14 downstream reseller customers. Such written notice shall instruct the downstream reseller
15 customers that the labels, labeling, shelf signs, or tags bearing the Warning must be displayed
16 on or in proximity to the Covered Products with such conspicuousness, as compared with other
17 words, statements or designs as to render the Warning likely to be seen, read, and understood
18 by an ordinary individual prior to sale.

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

25 Vejo must display the above Warning with such conspicuousness, as compared with other
26 words, statements or designs on the label, or on its website, if applicable, to render the Warning
27 likely to be read and understood by an ordinary individual under customary conditions of
28 purchase or use of the product.

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

4 If subsequently enacted changes to Proposition 65 or its implementing regulations require
5 the use of additional or different information on any warning specifically applicable to the
6 Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor
7 Warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this
8 Section.

9 **3.3 Conforming Covered Products**

10 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
11 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Cadmium Exposure
12 Level” is no greater than 4.1 micrograms of cadmium per day as determined by the exposure
13 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
14 3.4, and that is not known by Vejo to contain other chemicals that violate Proposition 65’s safe
15 harbor thresholds.

16 **3.4 Testing and Quality Control Methodology**

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

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

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

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

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

17 **3.4.6** Within thirty (30) days of ERC’s written request, which request shall not
18 be made more than once per year, Vejo shall deliver lab reports obtained pursuant to Section
19 3.4 to ERC. Vejo shall retain all test results and documentation for a period of three years from
20 the date of each test.

21 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
22 any Covered Product for which Vejo is providing a Warning, continuously and without
23 interruption from the Effective Date, or Compliance Date if applicable, pursuant to Section 3.2
24 of this Consent Judgment. In the event a Warning is provided after the Effective Date, or
25 Compliance Date if applicable, but Vejo thereafter ceases to provide the Warning, the testing
26 and reporting requirements of Section 3.4 of this Consent Judgment shall apply beginning
27 within one year after the date the Warning ceases to be provided, unless Vejo can show to the
28 satisfaction of ERC that the cessation in providing the Warning was a temporary error that was

1 resolved when discovered.

2 **4. SETTLEMENT PAYMENT**

3 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
4 attorney's fees, and costs, Vejo shall make a total payment of \$26,000.00 ("Total Settlement
5 Amount") to ERC within 5 days of the Effective Date ("Due Date"). Vejo shall make this
6 payment by wire transfer to ERC's account, for which ERC will give Vejo the necessary
7 account information. The Total Settlement Amount shall be apportioned as follows:

8 **4.2** \$3,000.00 shall be considered a civil penalty pursuant to California Health and
9 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$2,250.00) of the civil penalty to the
10 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
11 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
12 Code section 25249.12(c). ERC will retain the remaining 25% (\$750.00) of the civil penalty.

13 **4.3** \$2,159.85 shall be distributed to ERC as reimbursement to ERC for reasonable
14 costs incurred in bringing this action.

15 **4.4** \$8,990.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement
16 of ERC's attorney fees, while \$11,850.15 shall be distributed to ERC for its in-house legal
17 fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

18 **4.5** In the event that Vejo fails to remit the Total Settlement Amount owed under
19 Section 4 of this Consent Judgment on or before the Due Date, Vejo shall be deemed to be in
20 material breach of its obligations under this Consent Judgment. ERC shall provide written
21 notice of the delinquency to Vejo via electronic mail. If Vejo fails to deliver the Total
22 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
23 shall accrue interest at the statutory judgment interest rate provided in the California Code of
24 Civil Procedure section 685.010. Additionally, Vejo agrees to pay ERC's reasonable attorney's
25 fees and costs for any efforts to collect the payment due under this Consent Judgment.

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
28 written stipulation of the Parties and upon entry by the Court of a modified consent judgment

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

3 **5.2** If Vejo seeks to modify this Consent Judgment under Section 5.1, then Vejo must
4 provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to meet and
5 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
6 written notice to Vejo within thirty (30) days of receiving the Notice of Intent. If ERC notifies
7 Vejo in a timely manner of ERC’s intent to meet and confer, then the Parties shall meet and
8 confer in good faith as required in this Section. The Parties shall meet in person or via
9 telephone within thirty (30) days of ERC’s notification of its intent to meet and confer. Within
10 thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall
11 provide to Vejo a written basis for its position. The Parties shall continue to meet and confer
12 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it
13 become necessary, the Parties may agree in writing to different deadlines for the meet-and-
14 confer period.

15 **5.3** In the event that Vejo initiates or otherwise requests a modification under Section
16 5.1, and the meet and confer process leads to a joint motion or application for a modification of
17 the Consent Judgment, Vejo shall reimburse ERC its costs and reasonable attorney’s fees for
18 the time spent in the meet-and-confer process and filing and arguing the motion or application.
19 ERC shall not be reimbursed for costs or attorney’s fees for a ministerial motion (such as a
20 change in name or contact information) or if ERC does not expend more than two (2) hours of
21 attorney time on the joint motion.

22 **5.4** In the event that Proposition 65 is repealed or preempted as to food products,
23 then Vejo shall have no further obligation pursuant to this Consent Judgment with respect to,
24 and to the extent that the Covered Products are so affected.

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

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

1 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
2 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
3 inform Vejo in a reasonably prompt manner of its test results, including information sufficient
4 to permit Vejo to identify the Covered Products at issue. Vejo shall, within thirty (30) days
5 following such notice, provide ERC with testing information, from an independent third-party
6 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Vejo's
7 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter
8 prior to ERC taking any further legal action.

9 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

17 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
18 behalf of itself and in the public interest, and Vejo and its respective officers, directors,
19 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
20 franchisees, licensees, customers (not including private label customers of Vejo), distributors,
21 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
22 of any Covered Product, and the predecessors, successors, and assigns of any of them
23 (collectively, "Released Parties"). However, online third-party sellers that do not provide the
24 Warning after being instructed or notified by Vejo to do so, as outlined in Section 3.2, are not
25 released from liability for violations of Proposition 65.

26 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
27 claims for violations of Proposition 65 up through the Effective Date, or Compliance Date if
28 applicable, based on exposure to lead and/or cadmium from the Covered Products as set forth

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

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

14 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
15 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
16 discovered. ERC on behalf of itself only, and Vejo on behalf of itself only, acknowledge that
17 this Consent Judgment is expressly intended to cover and include all such claims up through
18 and including the Effective Date, or Compliance Date if applicable, including all rights of
19 action therefore. ERC and Vejo acknowledge that the claims released in Sections 8.2 and 8.3
20 above may include unknown claims, and nevertheless waive California Civil Code section
21 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

26 ERC on behalf of itself only, and Vejo on behalf of itself only, acknowledge and understand
27 the significance and consequences of this specific waiver of California Civil Code section
28 1542.

1 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
3 exposures to lead and/or cadmium in the Covered Products as set forth in the Notices and
4 Complaint.

5 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
6 environmental exposures arising under Proposition 65, nor shall it apply to any of Vejo's
7 products other than the Covered Products.

8 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12 **10. GOVERNING LAW**

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

15 **11. PROVISION OF NOTICE**

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

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

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

25 With a copy to:

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

1 **VEJO, INC.:**

2 Brenden Dwyer
3 Vejo, Inc.
4 1335 4th Street
5 Santa Monica, CA 90401
6 Email: support@vejo.com

7 With a copy to:

8 Abhishek K. Gurnani
9 Amin Talati Wasserman LLP
10 100 S. Wacker Drive, Suite 2000
11 Chicago, IL 60606
12 Telephone: (312) 327-3383
13 Email: abhishek@amintalati.com

14 **12. COURT APPROVAL**

15 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
16 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
17 Consent Judgment.

18 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
19 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
20 prior to the hearing on the motion.

21 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be void
22 and have no force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

28 The terms of this Consent Judgment have been reviewed by the respective counsel for
each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,

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

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

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

10 **16. ENFORCEMENT**

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

19 **17. ENTIRE AGREEMENT, AUTHORIZATION**

20 **17.1** This Consent Judgment contains the sole and entire agreement and understanding
21 of the Parties with respect to the entire subject matter herein, including any and all prior
22 discussions, negotiations, commitments, and understandings related thereto. No
23 representations, oral or otherwise, express or implied, other than those contained herein have
24 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
25 herein, shall be deemed to exist or to bind any Party.

26 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the Party he or she represents to stipulate to this Consent Judgment.

28 ///

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

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

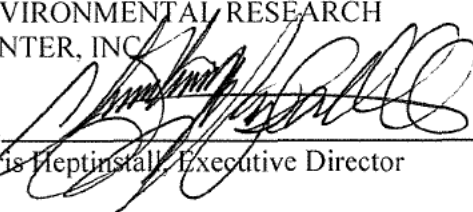
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
8 been diligently prosecuted, and that the public interest is served by such settlement; and

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

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

14 **IT IS SO STIPULATED:**

15
16 Dated: 4/18/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.
By: 
Chris Heptinstall, Executive Director

17
18
19
20 Dated: _____, 2023

VEJO, INC.

By:
Its:

21
22
23
24
25 ///
26 ///
27 ///
28 ///

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

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

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

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

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

IT IS SO STIPULATED:

Dated: _____, 2023

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: 4/18/2023, 2023

VEJO, INC.

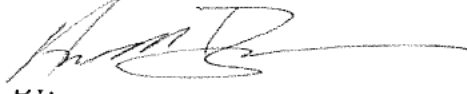
DocuSigned by:
Brenden Dwyer
33CD0170B79545A...
By: Brenden Dwyer
Its: Head of Operations

///
///
///
///

1 **APPROVED AS TO FORM:**

2 Dated: 4/18/2023, 2023

AQUA TERRA AERIS LAW GROUP



3
4
5 Matthew C. Maclear
Anthony M. Barnes
6 Attorneys for Plaintiff Environmental
Research Center, Inc.

7
8 Dated: _____, 2023

AMIN TALATI WASSERMAN, LLP

9
10 By: _____
11 Jennifer Adams
12 Attorney for Defendant Vejo, Inc.

13
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

20 Judge of the Superior Court

1 **APPROVED AS TO FORM:**

2 Dated: _____, 2023

AQUA TERRA AERIS LAW GROUP

3

4

By: _____

5

Matthew C. Maclear

6

Anthony M. Barnes

7

Attorneys for Plaintiff Environmental
Research Center, Inc.

8


Dated: 4/18/2023
_____, 2023

AMIN TALATI WASSERMAN, LLP

9

DocuSigned by:

10

By:  _____
FDE30D534B0448E...

11

Jennifer Adams

12

Attorney for Defendant Vejo, Inc.

13

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

20

Judge of the Superior Court

21

22

23

24

25

26

27

28

EXHIBIT A



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

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

July 8, 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:

Vejo, Inc.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 8, 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. **Vejo Piña Greens Smoothie Blend - Lead**
2. **Vejo Mood Boost Banana & Mango Functional Blend - Lead**
3. **Vejo Banana Almond With Plant-Based Protein Blend - 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 8, 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.*
July 8, 2022
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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 Vejo, 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.*
July 8, 2022
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Vejo, 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 and is positioned above a horizontal line.

Dated: July 8, 2022

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 8, 2022
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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 8, 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
Vejo, Inc.
1335 4th St
Santa Monica, CA 90401

Katerina Madison
(Registered Agent for Vejo, Inc.)
1335 4th St
Santa Monica, CA 90401

Harvard Business Services, Inc.
(Registered Agent for Vejo, Inc.)
16192 Coastal Hwy
Lewes, DE 19958

On July 8, 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 8, 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.*
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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
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@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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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
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, 4th 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

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, 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
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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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On July 8, 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 8, 2022, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

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 21, 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:

Vejo, Inc.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Vejo Spiced Chocolate – Lead, Cadmium**
2. **Vejo Tart Berry - Lead**
3. **Vejo Plant-Based Protein Natural Chocolate Flavor Protein Blend - 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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 these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 21, 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 these known toxic chemicals are 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 chemicals. 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 these chemicals.

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 chemicals, 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



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in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

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, appearing to read "Matthew Maclear", is written over a horizontal line.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Vejo, 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.*
July 21, 2022
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Vejo, 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 chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged 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 dark ink, appearing to read "Matthew Maclear", is written over a horizontal line.

Dated: July 21, 2022

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 21, 2022
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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 21, 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
Vejo, Inc.
1335 4th St
Santa Monica, CA 90401

Katerina Madison
(Registered Agent for Vejo, Inc.)
1335 4th St
Santa Monica, CA 90401

Harvard Business Services, Inc.
(Registered Agent for Vejo, Inc.)
16192 Coastal Hwy
Lewes, DE 19958

On July 21, 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 21, 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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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
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@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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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
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, 4th 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

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, 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
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



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On July 21, 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 21, 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.