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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 **NON ACIDIC BEVERAGES, LLC,**
21 **individually and dba NOOMA; and DOES**
22 **1-100**

22 **Defendants.**

CASE NO. 23CV028537

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 1, 2023

Trial Date: None set

23
24 **1. INTRODUCTION**

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

1 (“Proposition 65”), against Non Acidic Beverages, LLC, individually and dba NOOMA
2 (“NOOMA”) and Does 1-100. In this action, ERC alleges that a number of products
3 manufactured, distributed, or sold by NOOMA contain lead or mercury, chemicals listed under
4 Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these
5 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) NOOMA
7 Organic Sport Energy Drink Dragon Fruit (mercury), (2) NOOMA Sports Drink Clean
8 Hydration Blueberry Peach (mercury), (3) NOOMA Organic Sport Hydration Drink Mango
9 (mercury), and (4) NOOMA Organic Sport Energy Drink Pineapple Mango (lead).

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

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

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

20 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
21 dated July 14, 2022 and August 18, 2022 that were served on the California Attorney General,
22 other public enforcers, and NOOMA (“Notices”). True and correct copies of the 60-Day
23 Notices dated July 14, 2022 and August 18, 2022 are attached hereto as *Exhibits A* and *B* and
24 incorporated herein by reference. More than 60 days have passed since the Notices were served
25 on the Attorney General, public enforcers, and NOOMA and no designated governmental
26 entity has filed a Complaint against NOOMA with regard to the Covered Products or the
27 alleged violations.

28 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by

1 California consumers exposes them to lead or mercury without first receiving clear and
2 reasonable warnings from NOOMA, which is in violation of California Health and Safety
3 Code section 25249.6. NOOMA denies all allegations contained in the Notices and Complaint
4 and maintains that it has always been in compliance with California Health and Safety Code
5 section 25249.6 regarding each of the Covered Products.

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

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

16 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
17 as a Judgment by this Court.

18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning on the Effective Date, NOOMA shall be permanently enjoined from
28 manufacturing for sale in the State of California, "Distributing into the State of California," or

1 directly selling in the State of California, any Covered Product that exposes a person to a
2 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or a “Daily
3 Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it meets the
4 warning requirements under Section 3.2.

5 **3.3.1** Covered Products that are manufactured and have been put into final
6 packaging for consumer sale and that are no longer in the possession of or under the control of
7 NOOMA prior to the Effective Date may continue to be sold through and are exempt from the
8 Warning requirements in Section 3 of this Consent Judgment.

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

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

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

27 **3.2 Clear and Reasonable Warnings**


28 If NOOMA is required to provide a warning pursuant to Section 3.1, either one of the

1 following warnings must be utilized (“Warning”):

2 **OPTION 1:**

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

6 **OPTION 2:**

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

8 NOOMA shall use the phrase “cancer and” in the Warning if NOOMA has reason to
9 believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
10 determined pursuant to the quality control methodology set forth in Section 3.4 or if NOOMA
11 has reason to believe that another Proposition 65 chemical is present which requires a cancer
12 warning. For the Option 2 Warning, a symbol consisting of a black exclamation point in a
13 yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the
14 Warning, in a size no smaller than the height of the word “**WARNING.**” Where the sign, label
15 or shelf tag for the product is not printed using the color yellow, the symbol may be printed in
16 black and white. For the Option 1 Warning, as identified in the brackets, the warning shall
17 appropriately reflect whether there is either lead or mercury present in each of the Covered
18 Products, but if there is a chemical present at a level that requires a cancer warning, the chemical
19 requiring use of the phrase “cancer and” in the Warning shall always be identified.

20 The Warning shall be securely affixed to or printed upon the label of each Covered
21 Product. The Warning must be set off from other surrounding information and enclosed in a
22 box. In addition, for any Covered Product sold over the internet, the Warning shall be
23 provided by including either the Warning or a clearly marked hyperlink using the word
24 “Warning” in all capital and bold letters on the Covered Product’s primary display page, or by
25 otherwise prominently displaying the Warning to the purchaser prior to completing the
26 purchase. If the Warning is provided via a clearly marked hyperlink, the hyperlink must go
27 directly to a page prominently displaying the Warning without content that detracts from the
28 Warning. A warning is not prominently displayed if the purchaser must search for it in the

1 general content of the website. If the Warning appears on the checkout page, an asterisk or
2 other identifying method must be utilized to identify which products on the checkout page are
3 subject to the Warning.

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

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

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

17 **3.3 Conforming Covered Products**

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

24 **3.4 Testing and Quality Control Methodology**

25 **3.4.1** Beginning one year after the Effective Date, NOOMA shall arrange for
26 lead and mercury testing of the Covered Products at least once a year for a minimum of three
27 consecutive years by arranging for testing of three (3) randomly selected samples of each of
28 the Covered Products, in the form intended for sale to the end-user, which NOOMA intends to

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

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

11 **3.4.3** If NOOMA in its sole discretion finds an outlier result when performing
12 the analysis in Section 3.4.2, it may select an entirely different set of three (3) randomly
13 selected samples of the Covered Products which will be controlling. For purposes of this
14 Section, an outlier is a test whose result for lead or mercury, as applicable, is more than two
15 times the result of the next highest result for lead or mercury, as applicable. If NOOMA
16 selects an entirely different set of three (3) randomly selected samples based on this Section,
17 NOOMA shall provide the original set of three (3) tests, showing the outlier, to ERC pursuant
18 to any request for tests in Section 3.4.7 or pursuant to providing test results as required in
19 Section 6.2.

20 **3.4.4** All testing pursuant to this Consent Judgment shall be performed using a
21 laboratory method that complies with the performance and quality control factors appropriate
22 for the method used, including limit of detection and limit of quantification, sensitivity,
23 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
24 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
25 mg/kg.

26 **3.4.5** All testing pursuant to this Consent Judgment shall be performed by an
27 independent third party laboratory certified by the California Environmental Laboratory
28 Accreditation Program or an independent third-party laboratory that is registered with the

1 United States Food & Drug Administration.

2 **3.4.6** Nothing in this Consent Judgment shall limit NOOMA's ability to
3 conduct, or require that others conduct, additional testing of the Covered Products, including
4 the raw materials used in their manufacture.

5 **3.4.7** Within thirty (30) days of ERC's written request, NOOMA shall deliver
6 lab reports obtained pursuant to Section 3.4 to ERC. NOOMA shall retain all test results and
7 documentation for a period of five years from the date of each test.

8 **4. SETTLEMENT PAYMENT**

9 **4.1** In full satisfaction of all potential civil penalties, additional settlement
10 payments, attorney's fees, and costs, NOOMA shall make a total payment of \$40,000.00
11 ("Total Settlement Amount") to ERC within seven (7) days of the Effective Date ("Due
12 Date"). NOOMA shall make this payment by wire transfer to ERC's account, for which ERC
13 will give NOOMA the necessary account information in writing at least five (5) days before
14 the Effective Date. The Total Settlement Amount shall be apportioned as follows:

15 **4.2** \$4,000.00 shall be considered a civil penalty pursuant to California Health and
16 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$3,000.00) of the civil penalty to the
17 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
18 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
19 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,000.00) of the civil penalty.

20 **4.3** \$4,240.75 shall be distributed to ERC as reimbursement to ERC for reasonable
21 costs incurred in bringing this action.

22 **4.4** \$11,290.00 shall be distributed to Aqua Terra Aeris Law Group as
23 reimbursement of ERC's attorney fees, while \$20,469.25 shall be distributed to ERC for its in-
24 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
25 costs.

26 **4.5** In the event that NOOMA fails to remit the Total Settlement Amount owed
27 under Section 4 of this Consent Judgment on or before the Due Date, NOOMA shall be
28 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall

1 provide written notice of the delinquency to NOOMA via electronic mail. If NOOMA fails to
2 deliver the Total Settlement Amount within five (5) days from the written notice, the Total
3 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the
4 California Code of Civil Procedure section 685.010. Additionally, NOOMA agrees to pay
5 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under
6 this Consent Judgment.

7 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

24 **5.3** If either Party initiates or otherwise requests a modification under Section 5.1,
25 and the meet and confer process leads to a joint motion or application for a modification of the
26 Consent Judgment, each party shall bear its own attorneys' fees, unless the parties otherwise
27 agree upon in writing.

28 ///

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

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

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform NOOMA in a reasonably prompt manner, no later than sixty (60) days of its test results,
8 including information sufficient to permit NOOMA to identify the Covered Products at issue.
9 NOOMA shall, within thirty (30) days following such notice, provide ERC with testing
10 information, from an independent third-party laboratory meeting the requirements of Sections
11 3.4.3 and 3.4.4, demonstrating NOOMA’s compliance with the Consent Judgment. The Parties
12 shall first attempt to resolve the matter in good faith for a period of sixty (60) days prior to
13 ERC taking any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

1 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
2 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
3 or mercury from the Covered Products as set forth in the Notices of Violation. ERC, on behalf
4 of itself only, hereby fully releases and discharges the Released Parties from any and all
5 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
6 expenses asserted, or that could have been asserted from the handling, use, or consumption of
7 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
8 regulations arising from the failure to provide Proposition 65 warnings on the Covered
9 Products regarding lead or mercury up to and including the Effective Date.

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

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

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

ERC on behalf of itself only, and NOOMA on behalf of itself only, acknowledge and

1 understand the significance and consequences of this specific waiver of California Civil Code
2 section 1542.

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

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

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

14 **10. GOVERNING LAW**

15 **10.1** The terms and conditions of this Consent Judgment shall be governed by and
16 construed in accordance with the laws of the State of California.

17 **10.2** In the event that Proposition 65, either as a whole or as specifically applicable to
18 the Covered Products, is repealed by means of any California statute or regulation, or is federally
19 preempted, or is otherwise specifically rendered inapplicable to the Covered Products by a
20 decision of the California Supreme Court, or if any of the provisions of this Consent Judgment are
21 specifically rendered inapplicable or no longer required as to the Covered Products as a result of
22 any such repeal or preemption or decision of the California Supreme Court, or due to federal
23 regulations, then NOOMA may provide written notice to ERC of any asserted change in the law,
24 and it shall have no further obligations pursuant to this Consent Judgment with respect to the
25 Covered Products, to the extent that the Covered Products are so affected.

26 **11. PROVISION OF NOTICE**

27 All notices required to be given to either Party to this Consent Judgment by the other shall
28 be in writing and sent to the following agents listed below via first-class mail or via electronic

1 mail where required. Courtesy copies via email may also be sent.

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

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

8 With a copy to:

9 Matthew C. Maclear
10 Anthony M. Barnes
11 Aqua Terra Aeris Law Group
12 4030 Martin Luther King Jr. Way
13 Oakland, CA 94609
14 Telephone: (415) 568-5200
15 Email: mcm@atalawgroup.com
16 amb@atalawgroup.com

17 **NON ACIDIC BEVERAGES, LLC, individually and dba NOOMA:**

18 Brandon Smith
19 23555 Euclid Ave, Building 32,
20 Cleveland, OH 44117
21 Email: brandon@drinknooma.com

22 With a copy to:

23 Hazel Ocampo
24 Greenberg Traurig LLP
25 18565 Jamboree Road, Suite 500
26 Irvine, CA 92612
27 Telephone: (949) 732-6545
28 Email: ocampoh@gtlaw.com

12. COURT APPROVAL

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

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

1 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
2 void and have no force or effect.

3 **13. EXECUTION AND COUNTERPARTS**

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

7 **14. DRAFTING**

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

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

17 If a dispute arises with respect to either Party's compliance with the terms of this Consent
18 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or
19 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
20 be filed in the absence of such a good faith attempt to resolve the dispute beforehand for a period
21 of at least sixty (60) days from the date the Party provides notice to the other Party of the dispute
22 in accordance with the Notice provisions in Section 11.

23 **16. ENFORCEMENT**

24 Both Parties may, by motion or order to show cause before the Superior Court of
25 Alameda County, enforce the terms and conditions contained in this Consent Judgment. The
26 Parties may seek whatever fines, costs, penalties, or remedies as are provided by law for failure
27 to comply with the Consent Judgment.

28 ///

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 **17.1** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, including any and
4 all prior discussions, negotiations, commitments, and understandings related thereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

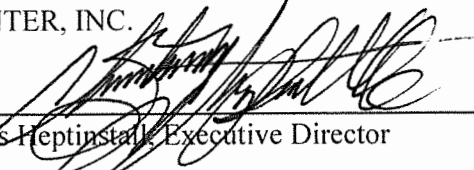
18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

22 **IT IS SO STIPULATED:**

23
24 Dated: 5/12/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

25
26 By: 
27 Chris Heptinstalk, Executive Director

1 Dated: May 11, 2023

NON ACIDIC BEVERAGES, LLC,
individually and dba NOOMA



By: Brandon Smith
Its: CEO

6 **APPROVED AS TO FORM:**

7
8 Dated: May 12, 2023

AQUA TERRA AERIS LAW GROUP

9
10
11 By: 

12 Matthew C. Maclear
13 Anthony M. Barnes
14 Attorneys for Plaintiff Environmental
Research Center, Inc.

15 Dated: May 12, 2023

GREENBERG TRAUER LLP

16
17 By: 

18 Hazel Ocampo
19 Attorney for Defendant Non
20 Acidic Beverages, LLC, individually
21 and dba NOOMA

22 **ORDER AND JUDGMENT**

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

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26
27 Dated: _____, 2023

Judge of the Superior Court

EXHIBIT A



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

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

July 14, 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:

Non Acidic Beverages, LLC, individually and dba NOOMA



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

1. **NOOMA Organic Sport Energy Drink Dragon Fruit - Mercury**
2. **NOOMA Sports Drink Clean Hydration Blueberry Peach - Mercury**
3. **NOOMA Organic Sport Hydration Drink Mango - Mercury**

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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 14, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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



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

Sincerely,

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

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Non Acidic Beverages, LLC, individually and dba NOOMA and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Non Acidic Beverages, LLC, individually and dba NOOMA

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.

Dated: July 14, 2022

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

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On July 14, 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
Non Acidic Beverages, LLC, individually
and dba NOOMA
23555 Euclid Ave, Bldg 32
Cleveland, OH 44117

Jarred Smith
(Registered Agent for Non Acidic Beverages, LLC, individually
and dba NOOMA)
23555 Euclid Ave, Bldg 32
Cleveland, OH 44117

Todd Fenton
(Registered Agent for Non Acidic Beverages, LLC,
individually and dba NOOMA.)
4420 Sombrero Circle
Littleton, CO 80123

JH Corporate Services, Inc.
(Registered Agent for Non Acidic Beverages, LLC, individually
and dba NOOMA)
60 E Simpson Ave
PO Box 2095
Jackson, WY 83001

On July 14, 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 14, 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:



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

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

Barbara Yook, District Attorney
Calaveras County
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Prop65Env@co.calaveras.ca.us

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Martinez, CA 94553
sgrassini@contracostada.org

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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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Independence, CA 93526
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mcda@mariposacounty.org

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Prop65notice@da.ocgov.com

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Prop65@rivcoda.org

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Sacramento, CA 95814
Prop65@sacda.org



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

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Summer Stephan, District Attorney
San Diego County
330 West Broadway
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Alexandra.grayner@sfgov.org

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Valerie.Lopez@sfcityattorney.org

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DAProp65@co.santa-barbara.ca.us

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San Jose, CA 95110
EPU@da.sccgov.org

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Proposition65notices@sanjoseca.gov

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Jeannie.Barnes@sonoma-county.org

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Jeff W. Reising, District Attorney
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cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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On July 14, 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 14, 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.*
July 14, 2022
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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

August 18, 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 product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to 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:

Non Acidic Beverages, LLC, individually and dba NOOMA



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
August 18, 2022
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Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

NOOMA Organic Sport Energy Drink Pineapple Mango – Lead

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 18, 2019, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 Non Acidic Beverages, LLC, individually and dba NOOMA and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Non Acidic Beverages, LLC, individually and dba NOOMA

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

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

Dated: August 18, 2022

Matthew Maclear



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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On August 18, 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
Non Acidic Beverages, LLC, individually
and dba NOOMA
23555 Euclid Ave, Bldg 32
Cleveland, OH 44117

Jarred Smith
(Registered Agent for Non Acidic Beverages, LLC, individually
and dba NOOMA)
23555 Euclid Ave, Bldg 32
Cleveland, OH 44117

Todd Fenton
(Registered Agent for Non Acidic Beverages, LLC,
individually and dba NOOMA.)
4420 Sombrero Circle
Littleton, CO 80123

JH Corporate Services, Inc.
(Registered Agent for Non Acidic Beverages, LLC, individually
and dba NOOMA)
60 E Simpson Ave
PO Box 2095
Jackson, WY 83001

On August 18, 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 August 18, 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:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Nancy O'Malley, District Attorney
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CEPDProp65@acgov.org

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Prop65Env@co.calaveras.ca.us

Stacey Grassini, Deputy District Attorney
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Martinez, CA 94553
sgrassini@contracostada.org

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Fresno, CA 93721
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Prop65notice@da.ocgov.com

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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
Prop65@sacda.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Summer Stephan, District Attorney
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SanDiegoDAProp65@sdca.org

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San Diego, CA 92101
CityAttyProp65@sandiego.gov

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Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney
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DAProp65@co.santa-barbara.ca.us

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Jeannie.Barnes@sonoma-county.org

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daspecialops@ventura.org

Jeff W. Reising, District Attorney
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Woodland, CA 95695
cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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On August 18, 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 August 18, 2022, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, reading "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.*

August 18, 2022

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Service List

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

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

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

District Attorney, Colusa County
310 6th St
Colusa, CA 95932

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

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

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

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Sutter County
463 2nd Street
Yuba City, CA 95991

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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