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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF ALAMEDA**

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

21 **Plaintiff,**

22 **vs.**

23 **KIZE CONCEPTS, INC.; KIZE**
24 **CONCEPTS LLC; and DOES 1-100**

25 **Defendants.**

26 **CASE NO. 23CV026171**

27 **STIPULATED CONSENT**
28 **JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 24, 2023

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On January 24, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),

1 against Kize Concepts, Inc. and Does 1-100. Thereafter, on June 16, 2023, ERC filed its First
2 Amended Complaint (the operative Complaint, hereinafter referred to as “Complaint”), which
3 also added Kize Concepts LLC as a defendant. Kize Concepts, Inc. and Kize Concepts LLC
4 are collectively referred to as “Kize.” In this action, ERC alleges that a number of products
5 manufactured, distributed, or sold by Kize contain lead and/or mercury, chemicals listed under
6 Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these
7 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
8 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Kize Life
9 Changing Bar Vanilla Almond (lead, mercury), (2) Kize Life Changing Bar Peanut Butter
10 Cookie Keto (lead, mercury), (3) Kize Life Changing Bar Peanut Butter (lead), (4) Kize Life
11 Changing Bar Lemon Cake Keto (mercury), (5) Kize Life Changing Bar Cookie Dough (lead,
12 mercury), (6) Kize Life Changing Bar Almond Butter Chocolate Sea Salt (lead, mercury), (7)
13 Kize Life Changing Bar Chocolate Brownie (lead, mercury), and (8) Kize Life Changing Bar
14 Peanut Butter Chocolate Chip (lead). For purposes of this Consent Judgment only, Kize
15 disputes the allegations of ERC, and alleges that the Kize Vanilla Almond Bar is the only
16 Covered Product that has the potential to be subject to the warning requirements of Proposition
17 65. Kize denies that the remaining Covered Products require a warning under Proposition 65.

18 **1.2** ERC and Kize are hereinafter referred to individually as a “Party” or
19 collectively as the “Parties.”

20 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
21 causes, helping safeguard the public from health hazards by reducing the use and misuse of
22 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
23 and encouraging corporate responsibility.

24 **1.4** Kize asserts that Kize Concepts, Inc. converted to Kize Concepts LLC in or
25 around late 2022/early 2023 and agrees that Kize Concepts LLC is responsible for all legal
26 liabilities, responsibilities, and obligations of Kize Concepts, Inc. with respect to the Covered
27 Products and Proposition 65, including all liabilities, responsibilities, and obligations as outlined
28 in this Consent Judgment. For purposes of this Consent Judgment, the Parties agree that Kize is a

1 business entity that has employed ten or more persons at all times relevant to this action and
2 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. Kize
3 manufactures, distributes, and/or sells the Covered Products.

4 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
5 dated October 6, 2022 and October 13, 2022 that were served on the California Attorney
6 General, other public enforcers, and Kize (“Notices”). True and correct copies of the 60-Day
7 Notices dated October 6, 2022 and October 13, 2022 are attached hereto as *Exhibits A* and *B*
8 and each is incorporated herein by reference. More than 60 days have passed since the Notices
9 were served on the Attorney General, public enforcers, and Kize and no designated
10 governmental entity has filed a Complaint against Kize with regard to the Covered Products or
11 the alleged violations.

12 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
13 California consumers exposes them to lead and/or mercury without first receiving clear and
14 reasonable warnings from Kize, which is in violation of California Health and Safety Code
15 section 25249.6. Kize denies all material allegations contained in the Notices and Complaint.

16 **1.7** The Parties have entered into this Consent Judgment in order to settle,
17 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
18 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
19 or be construed as an admission by any of the Parties or by any of their respective officers,
20 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
21 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
22 issue of law, or violation of law.

23 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
24 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have
25 in any current or future legal proceeding unrelated to these proceedings. The Parties also
26 intend for this Consent Judgment to provide, to the maximum extent permitted by law, *res*
27 *judicata* and/or collateral estoppel protection for Kize and its business affiliates,
28 distributors, subsidiaries, and/or divisions against any and all other claims based upon the

1 same or similar allegations as to the Covered Products. Kize’s willingness to enter into
2 this Consent Judgment is expressly based on its understanding that this Consent Judgment
3 will fully and finally resolve all claims related to, or that were or could have been brought
4 by ERC and that the Consent Judgment will have res judicata and/or collateral estoppel
5 effect to the full extent allowed by law with regard to any alleged violation of Proposition
6 65 by Kize, its customers, subsidiaries, distributors or affiliates.

7 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
8 as a Judgment by this Court.

9 **2. JURISDICTION AND VENUE**

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

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

18 **3.1** Beginning on the Effective Date, Kize shall be permanently enjoined from
19 manufacturing for sale in the State of California, “Distributing into the State of California,” or
20 directly selling in the State of California, any Covered Product that exposes a person to a
21 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or “Daily
22 Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it meets the
23 warning requirements under Section 3.2.

24 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
25 of California” shall mean directly shipping into California for sale in California or selling to a
26 distributor that Kize knows or has reason to know will sell in California.

27 **3.1.2** For purposes of this Consent Judgment only, the “Daily Lead Exposure
28 Level” shall be measured in micrograms, and shall be calculated using the following formula:

1 micrograms of lead per gram of product, multiplied by grams of product per serving of the
2 product (using the largest serving size appearing on the product label), multiplied by servings
3 of the product per day (using the largest number of recommended daily servings appearing on
4 the label), which equals micrograms of lead exposure per day. If the label contains no
5 recommended daily servings, then the number of recommended daily servings shall be one.

6 **3.1.3** For purposes of this Consent Judgment only, the “Daily Mercury
7 Exposure Level” shall be measured in micrograms, and shall be calculated using the following
8 formula: micrograms of mercury per gram of product, multiplied by grams of product per
9 serving of the product (using the largest serving size appearing on the product label),
10 multiplied by servings of the product per day (using the largest number of recommended daily
11 servings appearing on the label), which equals micrograms of mercury exposure per day. If the
12 label contains no recommended daily servings, then the number of recommended daily
13 servings shall be one.

14 **3.2 Clear and Reasonable Warnings**


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

17 **OPTION 1:**

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

21 OR

22 **OPTION 2:**

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

24
25 Kize shall use the phrase “cancer and” in the Warning if Kize has reason to believe that
26 the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to
27 the quality control methodology set forth in Section 3.4 or if Kize has reason to believe that
28 another Proposition 65 chemical is present which may require a cancer warning. For the Option 2

1 Warning, the entire Warning must be in a type size no smaller than the largest type size used for
2 other consumer information on the product. In no case shall the Warning appear in a type size
3 smaller than 6-point type. Further, for Option 2, a symbol consisting of a black exclamation point
4 in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of
5 the Warning, in a size no smaller than the height of the word “**WARNING.**” Where the sign,
6 label or shelf tag for the product is not printed using the color yellow, the symbol may be printed
7 in black and white. As identified in the brackets for the Option 1 Warning, the Warning shall
8 appropriately reflect whether there is lead, mercury, or both chemicals present in each of the
9 Covered Products, but if there is a chemical present at a level that requires a cancer warning, the
10 chemical requiring use of the phrase “cancer and” in the Warning shall always be identified.

11 The Warning shall be securely affixed to or printed upon the label of each Covered
12 Product and it must be set off from other surrounding information and enclosed in a box. In
13 addition, for any Covered Product sold over the internet, the Warning shall appear on the
14 checkout page or otherwise be prominently displayed to the purchaser prior to completing the
15 purchase when a California delivery address is indicated for any purchase of any Covered
16 Product. An asterisk or other identifying method must be utilized to identify which products on
17 the checkout page are subject to the Warning. The Warning may be displayed by a hyperlink,
18 using the word “**WARNING**” in all capital and bold letters, so long as the hyperlink goes
19 directly to a page prominently displaying the Warning without content that detracts from the
20 Warning. A warning is not prominently displayed if the purchaser must search for it in the
21 general content of the website.

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

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

1 words, statements or designs on the label, or on its website, if applicable, to render the Warning
2 likely to be read and understood by an ordinary individual under customary conditions of
3 purchase or use of the product. Where a sign or label used to provide the Warning for a Covered
4 Product includes consumer information about the Covered Product in a language other than
5 English, the Warning must also be provided in that language in addition to English.

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

9 If Proposition 65 or its implementing regulations are changed by any final regulation or
10 statute, or by a decision of the California Supreme Court, to require or permit a different method
11 of warning, and such change(s) is/are specifically applicable to the Covered Products and the
12 chemicals at issue in this case, the Parties agree that such new method may be used instead of or
13 in addition to the Warning set forth in this section.

14 The requirements of Section 3.2 do not apply to Covered Products that “enter the stream
15 of commerce” prior to the Effective Date. For purposes of this Consent Judgment, the term “enter
16 the stream of commerce” means that Covered Products are put into final packaging for consumer
17 sale and are no longer in the possession of or under the control of Kize.

18 **3.3 Conforming Covered Products**

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

25 **3.4 Testing and Quality Control Methodology**

26 **3.4.1** Beginning within one year of the Effective Date, Kize shall arrange for
27 lead and mercury testing of the Covered Products at least once a year for a minimum of five
28 consecutive years by arranging for testing of three (3) randomly selected samples of each of the

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

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

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

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

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

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

27 **3.4.7** The testing requirements of Section 3.4 do not apply to any Covered
28 Product for which Kize has provided the Warning specified in Section 3.2 continuously and

1 uninterrupted after the Effective Date; however, in the event Kize ceases to provide the Warning
2 specified in Section 3.2, Kize shall be required to comply with the testing requirements of this
3 section beginning immediately after the date the Warning ceases to be provided or one year after
4 the Effective Date, whichever date is later.

5 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
6 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
7 testing meets the requirements of Sections 3.4.3 and 3.4.4.

8 **3.6** Nothing in this Section 3 is intended to apply to Kize if Kize's status changes such
9 that it is not a "person in the course of doing business" as defined in California Health & Safety
10 Code Section 25249.11(b) and 27 CCR § 25102(h), each as in effect on the date that this Consent
11 Judgment is executed by the Parties. If Kize contends that its status has changed such that it is
12 no longer a "person in the course of doing business," Kize shall provide ERC with a declaration
13 stating the number of its employees, as defined in 27 CCR § 25102(h), as in effect on the date
14 that this Consent Judgment is executed by the Parties, as well as the number of its independent
15 contractors who perform work in lieu of employees. Such declaration shall also include Internal
16 Revenue Service (IRS) form 941s for the four quarters preceding the change in status and the
17 IRS form 941s covering each quarter from the change of status to the date of the declaration.
18 Nothing in this Section 3.5 shall preclude ERC from seeking to enforce the terms of this Consent
19 Judgment or Kize from asserting in response to such enforcement that it is no longer a "person in
20 the course of doing business."

21 **4. SETTLEMENT PAYMENT**

22 **4.1** In full satisfaction of all potential civil penalties, additional settlement
23 payments, attorney's fees, and costs, Kize shall make a total payment of \$65,000.00 ("Total
24 Settlement Amount") to ERC in three periodic payments (the "Periodic Payments") according
25 to the following payment schedule ("Due Dates"):

- 26 • Payment 1: \$32,500 within 5 days after the Effective Date
- 27 • Payment 2: \$16,250 within 35 days after the Effective Date
- 28 • Payment 3: \$16,250 within 70 days after the Effective Date

1 Kize shall make these payments by wire transfer to ERC's account, for which ERC will
2 give Kize the necessary account information. The Total Settlement Amount shall be
3 apportioned as follows:

4 **4.2** \$10,000.00 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$7,500.00) of the civil penalty to the
6 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,500.00) of the civil penalty.

9 **4.3** \$4,593.69 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 **4.4** \$15,575.00 shall be distributed to Wraith Law as reimbursement of ERC's
12 attorney's fees, while \$34,831.31 shall be distributed to ERC for its in-house legal fees. Except
13 as explicitly provided herein, each Party shall bear its own fees and costs.

14 **4.6** In the event that Kize fails to remit, in full, either of the Periodic Payments
15 owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable Due Date,
16 Kize shall be deemed to be in material breach of its obligations under this Consent Judgment.
17 ERC shall provide written notice of delinquency to Kize via electronic mail. If Kize fails to
18 deliver the delinquent payment within five (5) days from the written notice, the Total
19 Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall be
20 immediately due and owing and shall accrue interest at the statutory judgment interest rate
21 provided in the California Code of Civil Procedure section 685.010. Additionally, Kize agrees
22 to pay ERC's reasonable attorney's fees and costs for any efforts to collect any payment due
23 under this Consent Judgment.

24 **5. MODIFICATION OF CONSENT JUDGMENT**

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

1 **5.2** If Kize seeks to modify this Consent Judgment under Section 5.1, then Kize
2 must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to meet and
3 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
4 written notice to Kize within thirty (30) days of receiving the Notice of Intent. If ERC notifies
5 Kize in a timely manner of ERC’s intent to meet and confer, then the Parties shall meet and
6 confer in good faith as required in this Section. The Parties shall meet in person, via remote
7 meeting, or by telephone within thirty (30) days of ERC’s notification of its intent to meet and
8 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,
9 ERC shall provide to Kize a written basis for its position. The Parties shall continue to meet
10 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
11 Should it become necessary, the Parties may agree in writing to different deadlines for the
12 meet-and-confer period.

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

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

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

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

1 **6.3** If Proposition 65 is modified or repealed by any final regulation or statute, or by
2 a decision of the California Supreme Court, rendering it specifically inapplicable to the
3 Covered Products, then Kize shall have no further injunctive obligations pursuant to this
4 Consent Judgment, to the extent that the Covered Products are so affected by such modification
5 or repeal and subject to ERC’s right to seek enforcement of the Consent Judgment.

6 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

1 Products regarding lead and/or mercury up to and including the Effective Date.

2 **8.3** ERC on its own behalf only, and Kize on its own behalf only, further waive and
3 release any and all claims they may have against each other for all actions or statements made
4 or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
5 connection with the Notices and Complaint up through and including the Effective Date,
6 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
7 enforce the terms of this Consent Judgment.

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

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

20 ERC on behalf of itself only, and Kize on behalf of itself only, acknowledge and understand
21 the significance and consequences of this specific waiver of California Civil Code section
22 1542.

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

27 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
28 environmental exposures arising under Proposition 65, nor shall it apply to any of Kize's

1 products other than the Covered Products.

2 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

6 **10. GOVERNING LAW**

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

9 **11. PROVISION OF NOTICE**

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

13 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
14 Chris Heptinstall, Executive Director, Environmental Research Center
15 3111 Camino Del Rio North, Suite 400
16 San Diego, CA 92108
17 Ph: (619) 500-3090
18 Email: chris.heptinstall@erc501c3.org

19 With a copy to:
20 WILLIAM F. WRAITH
21 WRAITH LAW
22 25361 Commercentre Drive, Ste 150
23 Lake Forest, CA 92630
24 Ph: (949) 452-1234
25 Email: bill@wraithlaw.com

26 **KIZE CONCEPTS, INC. and KIZE CONCEPTS LLC**
27 Jeff Ragan
28 Kize Concepts LLC
1740 NW 3rd Street
Oklahoma City, OK 73106
Email: Jeff@kizeconcepts.com

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///

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1 With a copy to:
2 EDWARD A. KRAUS, SBN 162043
3 LAUREN BERGER, SBN 136149
4 SILICON VALLEY LAW GROUP
5 1 North Market Street, Ste 200
6 San Jose, CA 95113-1207
7 Ph: (408) 573-5700
8 Email: lb@svlg.com

7 **12. COURT APPROVAL**

8 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
9 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
10 Consent Judgment.

11 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
12 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
13 prior to the hearing on the motion.

14 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
15 void and have no force or effect.

16 **13. EXECUTION AND COUNTERPARTS**

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

20 **14. DRAFTING**

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

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

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

7 **16. ENFORCEMENT**

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

12 **17. ENTIRE AGREEMENT, AUTHORIZATION**

13 **17.1** This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter herein, including any and
15 all prior discussions, negotiations, commitments, and understandings related thereto. No
16 representations, oral or otherwise, express or implied, other than those contained herein have
17 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
18 herein, shall be deemed to exist or to bind any Party.

19 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
20 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

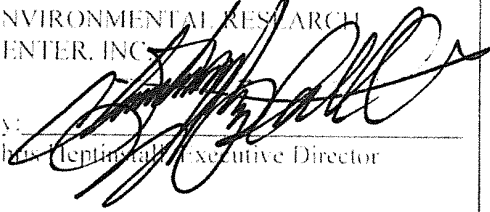
26 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
27 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
28 been diligently prosecuted, and that the public interest is served by such settlement; and

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

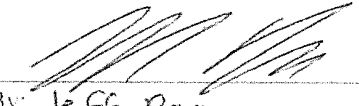
3 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
4 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

5 **IT IS SO STIPULATED:**

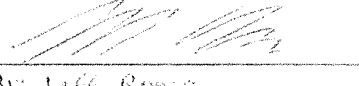
6 Dated: 3/8/, 2024

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

11 Dated: March 6, 2024

KIZE CONCEPTS, INC.
By: 
Jeff Ragan
Its: CEO

15 Dated: March 5, 2024


KIZE CONCEPTS LLC
By: 
Jeff Ragan
Its: CEO

19 **APPROVED AS TO FORM:**

20 Dated: _____, 2024

WRAITH LAW
By: _____
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

25 Dated: March 5, 2024

SILICON VALLEY LAW GROUP
By: 
Lauren Berger
Attorney for Defendants Kize Concepts,
Inc. and Kize Concepts LLC

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

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

5 **IT IS SO STIPULATED:**


6 Dated: _____, 2024

ENVIRONMENTAL RESEARCH
CENTER, INC.

7
8 By: _____
9 Chris Heptinstall, Executive Director


10
11 Dated: March 6, 2024

KIZE CONCEPTS, INC.

12 
13 By: Jeff Ragan
14 Its: CEO

15 Dated: March 5, 2024


KIZE CONCEPTS LLC

16 
17 By: Jeff Ragan
18 Its: CEO

19 **APPROVED AS TO FORM:**


20 Dated: March 8, 2024

WRAITH LAW

21 By: 
22 William F. Wraith
23 Attorney for Plaintiff Environmental
24 Research Center, Inc.

25 Dated: March 5, 2024

SILICON VALLEY LAW GROUP

26 
27 By: Lauren Berger
28 Lauren Berger
Attorney for Defendants Kize Concepts,
Inc. and Kize Concepts LLC

1 **ORDER AND JUDGMENT**

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5
6 Dated: _____, 2024

7 Judge of the Superior Court

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EXHIBIT A

WRAITH LAW

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

October 6, 2022

NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

Kize Concepts, Inc.

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. Kize Life Changing Bar Vanilla Almond – Lead, Mercury**
- 2. Kize Life Changing Bar Peanut Butter Cookie Keto – Lead, Mercury**
- 3. Kize Life Changing Bar Peanut Butter – Lead**
- 4. Kize Life Changing Bar Lemon Cake Keto – Mercury**

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

October 6, 2022

Page 2

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 these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 6, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until 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 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 me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Kize Concepts, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Kize Concepts, Inc.

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

Dated: October 6, 2022



William F. Wraith

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On October 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Kize Concepts, Inc.
1740 NW 3rd St
Oklahoma City, OK 73106

Jeffrey Ragan
(Registered Agent for Kize Concepts, Inc.)
1740 NW 3rd St
Oklahoma City, OK 73106

On October 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On October 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

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

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

October 6, 2022

Page 5

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

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

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

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

Clifford H. Newell, District Attorney
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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
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Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
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Quincy, CA 95971
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney
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SanDiegoDAProp65@sdcca.org

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

Alexandra Grayner, Assistant District Attorney
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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@sfcityatty.org

Tori Verber Salazar, District Attorney
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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

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

October 6, 2022

Page 6

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

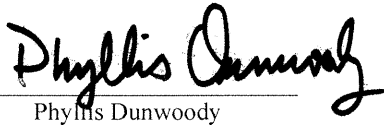
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

On October 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 6, 2022, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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 Tempe St.,
Ste 1200
Los Angeles, CA 90012

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

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

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

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

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

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

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

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

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

District Attorney, Sierra
County
Post Office Box 457
100 Courthouse Square,
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.

EXHIBIT B

WRAITH LAW

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

October 13, 2022

NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ. (PROPOSITION 65)

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

Kize Concepts, Inc.

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. Kize Life Changing Bar Cookie Dough – Lead, Mercury**
- 2. Kize Life Changing Bar Almond Butter Chocolate Sea Salt – Lead, Mercury**
- 3. Kize Life Changing Bar Chocolate Brownie – Lead, Mercury**
- 4. Kize Life Changing Bar Peanut Butter Chocolate Chip - 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.

October 13, 2022

Page 2

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 these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 13, 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 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 me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Kize Concepts, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

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

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

Dated: October 13, 2022



William F. Wraith

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On October 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Kize Concepts, Inc.
1740 NW 3rd St
Oklahoma City, OK 73106

Jeffrey Ragan
(Registered Agent for Kize Concepts, Inc.)
1740 NW 3rd St
Oklahoma City, OK 73106

On October 13, 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 October 13, 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

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

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

Thomas L. Hardy, District Attorney
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Independence, CA 93526
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Stacey Grassini, Deputy District Attorney
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Martinez, CA 94553
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Susanville, CA 96130
mlatimer@co.lassen.ca.us

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

October 13, 2022

Page 5

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Clifford H. Newell, District Attorney
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Nevada City, CA 95959
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Todd Spitzer, District Attorney
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Prop65notice@da.ocgov.com

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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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San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

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

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edobroth@co.slo.ca.us

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

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EPU@da.sccgov.org

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San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney
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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

October 13, 2022

Page 6

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

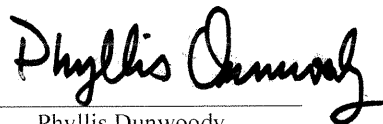
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On October 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 13, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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 Tempe St.,
Ste 1200
Los Angeles, CA 90012

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

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3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney,
Mendocino County
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Ukiah, CA 95482

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

District Attorney, Mono
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Bridgeport, CA 93517

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419 Fourth Street, 2nd
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District Attorney, San
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San Bernadino, CA
92415

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94063

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Redding, CA 96001

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Yreka, CA 96097

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4500
Fairfield, CA 94533

District Attorney,
Stanislaus County
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Modesto, CA 95354

District Attorney, Sutter
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Yuba City, CA 95991

District Attorney,
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Red Bluff, CA 96080

District Attorney, Trinity
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Weaverville, CA 96093

District Attorney,
Tuolumne County
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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.