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

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

20 **Plaintiff,**

21 **vs.**

22 **SKRATCH LABS LLC and DOES 1-100**

23 **Defendants.**

**CASE NO. 22CV017774**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 13, 2022

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On September 13, 2022, Plaintiff Environmental Research Center, Inc.  
26 (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this  
27 action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant  
28 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition

1 65”), against Skratch Labs LLC (“Skratch Labs”) and Does 1-100. A First Amended  
2 Complaint (the operative Complaint, hereinafter referred to as “Complaint”) was filed on July  
3 24, 2023. In this action, ERC alleges that a number of products manufactured, distributed, or  
4 sold by Skratch Labs contain lead and/or mercury and/or perfluorooctanoic acid (“PFOA”),  
5 chemicals listed under Proposition 65 as carcinogens and/or reproductive toxins, and expose  
6 consumers to these chemicals at a level requiring a Proposition 65 warning. These products  
7 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
8 Products”) are: (1) Skratch Labs Sport Energy Chews Sour Cherry (lead, mercury), (2) Skratch  
9 Labs Sport Energy Chews Orange (lead, mercury), (3) Skratch Labs Sport Energy Chews  
10 Raspberry (lead), (4) Skratch Labs Sport Energy Chews Matcha Green Tea & Lemon (lead,  
11 mercury), (5) Skratch Labs Sport Hydration Mix Summer Peach (lead), (6) Skratch Labs Sport  
12 Hydration Mix Matcha Green Tea & Lemon (lead), (7) Skratch Labs Sport Superfuel Drink  
13 Mix Raspberry (lead, mercury), (8) Skratch Labs Sport Recovery Drink Mix Horchata (lead),  
14 (9) Skratch Labs Sport Recovery Drink Mix with Coffee (lead), (10) Skratch Labs Sport  
15 Recovery Drink Mix with Chocolate (lead), (11) Skratch Labs Sport Vegan Recovery Drink  
16 Mix with Chocolate<sup>1</sup> (lead, PFOA), and (12) Skratch Labs Sport Hydration Drink Mix Lemon  
17 & Lime (mercury).

18 **1.2** ERC and Skratch Labs 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** For purposes of this Consent Judgment, the Parties agree that Skratch Labs is a  
25 business entity that has employed ten or more persons at all times relevant to this action and  
26 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.  
27 Skratch Labs manufactures, distributes, and/or sells the Covered Products.

28 \_\_\_\_\_  
<sup>1</sup> This product is also called Skratch Labs Vegan Recovery Sport Drink Mix Chocolate

1           **1.5**     The Complaint is based on allegations contained in ERC’s Notices of Violation  
2 dated May 17, 2022, May 26, 2022, and May 12, 2023 that were served on the California  
3 Attorney General, other public enforcers, and Skratch Labs (“Notices”). True and correct  
4 copies of the 60-Day Notices dated May 17, 2022, May 26, 2022, and May 12, 2023 are  
5 attached hereto as *Exhibits A, B* and *C* and each is incorporated herein by reference. More than  
6 60 days have passed since the Notices were served on the Attorney General, public enforcers,  
7 and Skratch Labs and no designated governmental entity has filed a Complaint against Skratch  
8 Labs with regard to the Covered Products or the alleged violations.

9           **1.6**     ERC’s Notices and Complaint allege that use of the Covered Products by  
10 California consumers exposes them to lead and/or mercury and/or PFOA without first  
11 receiving clear and reasonable warnings from Skratch Labs, which is in violation of California  
12 Health and Safety Code section 25249.6. Skratch Labs denies all allegations contained in the  
13 Notices and Complaint, and maintains that it has always been in compliance with California  
14 Health and Safety Code section 25249.6 regarding each of the Covered Products.

15           **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
16 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
17 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
18 or be construed as an admission by any of the Parties or by any of their respective officers,  
19 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
20 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
21 issue of law, violation of law, or liability.

22           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
23 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
24 any current or future legal proceeding unrelated to these proceedings.

25           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
26 as a Judgment by this Court. The Compliance Date is the later of the Effective Date or January  
27 1, 2024.

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1     **2.     JURISDICTION AND VENUE**

2             For purposes of this Consent Judgment and any further court action that may become  
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
4 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
5 over Skratch Labs as to the acts alleged in the Complaint, that venue is proper in Alameda  
6 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
7 resolution of all claims up through and including the Compliance Date that were or could have  
8 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

10            **3.1**           Beginning on the Compliance Date, Skratch Labs shall be permanently  
11 enjoined from manufacturing for sale in the State of California, “Distributing into the State of  
12 California,” or directly selling in the State of California, any Covered Product that exposes a  
13 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or  
14 to a “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day and/or  
15 any detectible level of PFOA unless it meets the warning requirements under Section 3.2 as  
16 determined pursuant to the Testing and Quality Control Methodology in Section 3.4.

17                   **3.1.1** As used in this Consent Judgment, the term “Distributing [Distributed]  
18 into the State of California” shall mean to directly ship a Covered Product into California for  
19 sale in California or to sell a Covered Product to a distributor that Skratch Labs knows will sell  
20 the Covered Product in California.

21                   **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
22 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
23 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
24 product (using the largest serving size appearing on the product label or nutritional facts  
25 panel), multiplied by servings of the product per day (using the largest number of  
26 recommended daily servings appearing on the label or nutritional facts panel), which equals  
27 micrograms of lead exposure per day. If the label contains no recommended daily servings,  
28 then the number of recommended daily servings shall be one.

1           **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure  
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
3 micrograms of mercury per gram of product, multiplied by grams of product per serving of the  
4 product (using the largest serving size appearing on the product label or nutritional facts  
5 panel), multiplied by servings of the product per day (using the largest number of  
6 recommended daily servings appearing on the label or nutritional facts panel), which equals  
7 micrograms of mercury exposure per day. If the label contains no recommended daily servings,  
8 then the number of recommended daily servings shall be one.

9           **3.1.4** For purposes of calculating the “Daily Lead Exposure Level” and the  
10 “Daily Mercury Exposure Level” the serving size and daily servings for the Covered Products  
11 shall be as listed on *Exhibit D*. Additionally, within one year after the Effective Date, Skratch  
12 Labs shall update the usage instructions text appearing on the Covered Products listed in  
13 *Exhibit D* (Numbers 1 and 2) with the intent of aligning the usage text with the serving  
14 information contained in *Exhibit D* (Numbers 1 and 2).

### 15           **3.2 Clear and Reasonable Warnings**

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

#### 18           **OPTION 1:**

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

#### 22           **OPTION 2:**

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

24           Skratch Labs shall use the phrase “cancer and” in the Warning if Skratch Labs knows  
25 that PFOA is present in the Covered Product, or if Skratch Labs has reason to believe that the  
26 “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 Skratch Labs has reason to  
28

1 believe that another Proposition 65 chemical is present which may require a cancer warning.  
2 For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow  
3 equilateral triangle with a bold black outline shall be placed to the left of the text of the  
4 Warning, in a size no smaller than the height of the word “**WARNING.**” Where the label for  
5 the product is not printed using the color yellow, the symbol may be printed in black and  
6 white. As identified in the brackets, the warning shall appropriately reflect whether there is  
7 lead, mercury, PFOA, or multiple chemicals present in each of the Covered Products, but if  
8 there is a chemical present at a level that requires a cancer warning, either lead or the chemical  
9 requiring use of the phrase “cancer and” in the Warning shall always be identified.

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

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

1           Skratch Labs must display the above Warning with such conspicuousness, as compared  
2 with other words, statements or designs on the label, or on its website, if applicable, to render the  
3 Warning likely to be read and understood by an ordinary individual under customary conditions  
4 of purchase or use of the product.

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

### 8           **3.3     Conforming Covered Products**

9           **3.3.1** A Conforming Covered Product is a Covered Product that does not  
10 contain any detectible level of PFOA and for which the “Daily Lead Exposure Level” is no  
11 greater than 0.5 micrograms of lead per day, after subtracting the amount of lead deemed  
12 “naturally occurring,” for purposes of this Consent Judgment only, for each ingredient listed in  
13 **Table 1** below, and/or the “Daily Mercury Exposure Level” is no greater than 0.3 micrograms  
14 of mercury per day as determined by the exposure methodology set forth in Sections 3.1.2 and  
15 3.1.3 and pursuant to the quality control methodology described in Section 3.4.

16           **3.3.2** In calculating the Daily Lead Exposure Level for a Covered Product,  
17 Skratch Labs shall be allowed to deduct the amount of lead which is deemed “naturally  
18 occurring” in the ingredients listed in **Table 1** that are contained in that Covered Product under  
19 the following conditions: For each of two years after the Effective Date, if Skratch Labs is  
20 claiming entitlement to a “naturally occurring” allowance, Skratch Labs shall provide ERC  
21 with the following information: (a) Skratch Labs must produce to ERC a written list of each  
22 ingredient in the Covered Product, and the amount, measured in grams, of each such ingredient  
23 contained therein, for which a “naturally occurring” allowance is claimed; (b) Skratch Labs  
24 must provide ERC with laboratory testing, conducted during the year for which the “naturally  
25 occurring” allowance is claimed, that complies with Sections 3.4.4 and 3.4.5 and that shows  
26 the amount of lead, if any, contained in each ingredient listed in **Table 1** that is contained in  
27 the Covered Product and for which Skratch Labs intends to deduct “naturally occurring” lead;  
28 (c) If the laboratory testing reveals the presence of lead in any of the ingredients listed in **Table**

1 **1** that are contained in the Covered Product, Skratch Labs shall be entitled to deduct the  
 2 amount of lead contained in each such ingredient, up to the full amount of the allowance for  
 3 each such ingredient as shown in **Table 1**, but not to exceed the total amount of lead contained  
 4 in such ingredient; and (d) If the Covered Product does not contain any of the ingredients  
 5 listed in **Table 1**, Skratch Labs shall not be entitled to a deduction for “naturally occurring”  
 6 lead in the Covered Product for those ingredients. The information required by Sections 3.3.2  
 7 (a) and (b) shall be provided to ERC, subject to confidentiality, one year after the Effective  
 8 Date, and any year thereafter that Skratch Labs claims entitlement to the “naturally occurring”  
 9 allowance.

10 **3.3.3** The total amount of lead deemed “naturally occurring” in each Covered  
 11 Product, for purposes of this Consent Judgment only, is the sum of the amounts of “naturally  
 12 occurring” lead, as outlined in Section 3.3.2, supplied by each ingredient listed in **Table 1** that is  
 13 present in each Covered Product. For each ingredient listed in **Table 1**, the maximum amount of  
 14 lead that may be deemed “naturally occurring” is listed in **Table 1** in micrograms of “naturally  
 15 occurring” lead per gram of the ingredient that is contained in the Covered Product.

16 **TABLE 1**

<b>Ingredient</b>	<b>Allowances of Amount of Lead Deemed Naturally Occurring</b>
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa Powder	Up to 1.0 micrograms/gram

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27 **3.4 Testing and Quality Control Methodology**

28 **3.4.1** Beginning one year after the Effective Date, Skratch Labs shall arrange



1 for lead and mercury testing of all Covered Products and it shall arrange for PFOA testing of  
2 the product: Skratch Labs Sport Vegan Recovery Drink Mix with Chocolate at least once a  
3 year for a minimum of two (2) consecutive years by arranging for testing of three (3) randomly  
4 selected samples of each of the Covered Products, in the form intended for sale to the end-user,  
5 which Skratch Labs intends to sell or is manufacturing for sale in California, directly selling to  
6 a consumer in California or “Distributing into the State of California.” If tests conducted  
7 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
8 each of two consecutive years, then the testing requirements of this Section will no longer be  
9 required as to that Covered Product. However, if during the two-year testing period, Skratch  
10 Labs materially changes the formula of any of the Covered Products, Skratch Labs shall test  
11 that Covered Product annually for at least two (2) consecutive years after such change is made.

12 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the  
13 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three  
14 (3) randomly selected samples of the Covered Products will be controlling.

15 **3.4.3** If Skratch Labs in its sole discretion finds an outlier result when  
16 performing the analysis, for lead and/or mercury only, in Section 3.4.1, it may select an  
17 entirely different set of three (3) randomly selected samples of the Covered Product at issue  
18 which will then be controlling. For purposes of this Section, an outlier is a test whose result for  
19 lead or mercury, as applicable, is more than two times the result of the next highest result for  
20 lead or mercury, as applicable. If Skratch Labs selects an entirely different set of three (3)  
21 randomly selected samples based on this Section, Skratch Labs shall notify ERC in writing that  
22 it has done so and shall, if requested by ERC in writing provide the original set of three (3)  
23 tests, showing the outlier, to ERC pursuant to any request for tests in Section 3.4.7 or pursuant  
24 to providing test results as required in Section 6.2. Nothing in this Section 3.4.3 shall be  
25 applicable to Skratch Labs’ testing for PFOA under Section 3.4.1.

26 **3.4.4** All testing pursuant to this Consent Judgment shall be performed using a  
27 laboratory method that complies with the performance and quality control factors appropriate  
28 for the method used, including limit of detection and limit of quantification, sensitivity,

1 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
2 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
3 mg/kg for lead and mercury testing and less than or equal to 0.001 mg/kg for PFOA testing.

4 **3.4.5** All testing pursuant to this Consent Judgment shall be performed by an  
5 independent third party laboratory certified by the California Environmental Laboratory  
6 Accreditation Program or an independent third-party laboratory that is registered with the  
7 United States Food & Drug Administration.

8 **3.4.6** Nothing in this Consent Judgment shall limit Skratch Labs’ ability to  
9 conduct, or require that others conduct, additional testing of the Covered Products, including  
10 the raw materials used in their manufacture.

11 **3.4.7** Within thirty (30) days of ERC’s written request, Skratch Labs shall  
12 deliver lab reports obtained pursuant to Section 3.4 to ERC. Skratch Labs shall retain all test  
13 results and documentation for a period of two (2) years from the date of each test.

#### 14 **4. SETTLEMENT PAYMENT**

15 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
16 payments, attorney’s fees, and costs, Skratch Labs shall make a total payment of \$118,500.00  
17 (“Total Settlement Amount”) to ERC within ten (10) days of the Effective Date (“Due Date”).  
18 Skratch Labs shall make this payment by check, payable to Environmental Research Center,  
19 Inc. and mailed by United States Priority Mail to the attention of Chris Heptinstall at the  
20 following address: Environmental Research Center, Inc., 306 Joy Street, Ft. Oglethorpe, GA  
21 30742. The Total Settlement Amount shall be apportioned as follows:

22 **4.2** \$10,000.00 shall be considered a civil penalty pursuant to California Health and  
23 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$7,500.00) of the civil penalty to the  
24 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
25 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
26 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,500.00) of the civil penalty.

27 **4.3** \$16,660.00 shall be distributed to ERC as reimbursement to ERC for reasonable  
28 costs incurred in bringing this action.

1           **4.4**     \$50,641.00 shall be distributed to Lozeau Drury LLP as reimbursement of  
2 ERC’s attorney fees, while \$41,199.00 shall be distributed to ERC for its in-house legal fees.  
3 Except as explicitly provided herein, each Party shall bear its own fees and costs.

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

13     **5.    MODIFICATION OF CONSENT JUDGMENT**

14           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
15 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
16 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
17 modified consent judgment.

18           **5.2**     If Skratch Labs seeks to modify this Consent Judgment under Section 5.1, then  
19 Skratch Labs must provide written notice to ERC of its intent (“Notice of Intent”). If ERC  
20 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
21 must provide written notice to Skratch Labs within thirty (30) days of receiving the Notice of  
22 Intent. If ERC timely notifies Skratch Labs of ERC’s intent to meet and confer, then the  
23 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in  
24 person or via telephone within thirty (30) days of ERC’s notification of its intent to meet and  
25 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,  
26 ERC shall provide to Skratch Labs a written basis for its position.. The Parties shall continue  
27 to meet and confer for an additional thirty (30) days in an effort to resolve any remaining  
28 disputes. Should it become necessary, the Parties may agree in writing to different deadlines

1 for the meet-and-confer period.

2           **5.3**     In the event that Skratch Labs initiates or otherwise requests a modification  
3 under Section 5.1, and the meet and confer process leads to a joint motion or joint application  
4 for a modification of the Consent Judgment, ERC may seek reimbursement of its costs and  
5 reasonable attorney’s fees for the time spent in the meet and confer process and filing and  
6 arguing the joint motion or application.

7           **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
8           **JUDGMENT**

9           **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or  
10 terminate this Consent Judgment.

11           **6.2**     If ERC alleges that any Covered Product fails to qualify as a Conforming  
12 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
13 inform Skratch Labs within sixty (60) days of its test results, including information sufficient to  
14 permit Skratch Labs to identify the Covered Products at issue (including all test results and lot  
15 numbers of the Covered Products tested). Skratch Labs shall, within thirty (30) days following  
16 such notice, provide ERC with testing information, from an independent third-party laboratory  
17 meeting the requirements of Sections 3.4.4 and 3.4. 5, demonstrating Skratch Labs’ compliance  
18 with the Consent Judgment. The Parties shall first attempt to resolve the matter in good faith  
19 for a period of sixty (60) days prior to ERC taking any further legal action.

20           **7.     APPLICATION OF CONSENT JUDGMENT**

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

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

28           **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC,

1 on behalf of itself and in the public interest, and Skratch Labs and its respective officers,  
2 directors, shareholders, employees, agents, parent companies, subsidiaries, affiliates, divisions,  
3 suppliers, franchisees, licensees, customers (not including private label customers of Skratch  
4 Labs), distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
5 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
6 of them (collectively, "Released Parties").

7 **8.2** ERC, acting in the public interest, releases the Released Parties from any  
8 and all claims for violations of Proposition 65 up through the Compliance Date based on  
9 exposure to lead and/or mercury and/or PFOA from the Covered Products as set forth in the  
10 Notices of Violation. ERC, on behalf of itself only, hereby fully releases and discharges the  
11 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,  
12 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from  
13 the handling, use, or consumption of the Covered Products, as to any alleged violation of  
14 Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
15 65 warnings on the Covered Products regarding lead and/or mercury and/or PFOA up to and  
16 including the Compliance Date.

17 **8.3** ERC on its own behalf only, and Skratch Labs on its own behalf only, further  
18 waive and release any and all claims they may have against each other for all actions or  
19 statements made or undertaken in the course of seeking or opposing enforcement of  
20 Proposition 65 in connection with the Notices and Complaint up through and including the  
21 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
22 right to seek to enforce the terms of this Consent Judgment.

23 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
24 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
25 discovered. ERC on behalf of itself only, and Skratch Labs on behalf of itself only,  
26 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
27 claims up through and including the Compliance Date, including all rights of action therefore.  
28 ERC and Skratch Labs acknowledge that the claims released in Sections 8.2 and 8.3 above

1 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
2 any such unknown claims. California Civil Code section 1542 reads as follows:

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

9 ERC on behalf of itself only, and Skratch Labs on behalf of itself only, acknowledge and  
10 understand the significance and consequences of this specific waiver of California Civil Code  
11 section 1542.

12 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
13 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
14 exposures to lead and/or mercury and/or PFOA in the Covered Products as set forth in the  
15 Notices and Complaint.

16 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
17 environmental exposures arising under Proposition 65, nor shall it apply to any of Skratch  
18 Labs' products other than the Covered Products sold in California, manufactured for sale in the  
19 State of California, or "Distributed into the State of California.".

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

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

## 24 **10. GOVERNING LAW**

25 **10.1** The terms and conditions of this Consent Judgment shall be governed by and  
26 construed in accordance with the laws of the State of California.

27 **10.2** In the event that Proposition 65, either as a whole or as specifically applicable  
28 to the Covered Products or listed chemicals, is repealed or federally preempted, or if new or  
different safe harbor levels are established as applicable to the Covered Products (including  
PFOA), or if Proposition 65 is otherwise rendered inapplicable to the Covered Products or

1 listed chemicals, all by any final regulation or statute, or by a decision of the California  
2 Supreme Court, or if any of the provisions of this Consent Judgment are specifically rendered  
3 inapplicable or no longer required as to the Covered Products as a result of any such regulatory  
4 or statutory change, repeal or preemption or decision of the California Supreme Court, or due  
5 to federal laws or regulations, then Skratch Labs may provide written notice to ERC of any  
6 asserted change in the law, and it shall have no further obligations pursuant to this Consent  
7 Judgment with respect to the Covered Products, to the extent that the Covered Products are so  
8 affected and subject to ERC's right to seek enforcement of the Consent Judgment.

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](mailto:chris.heptinstall@erc501c3.org)

19 With a copy to:

20 Richard T. Drury  
21 Lozeau | Drury LLP  
22 1939 Harrison Street, Suite 150  
23 Oakland, CA 94612  
24 Ph: (510) 836-4200  
25 Email: [richard@lozeaudrury.com](mailto:richard@lozeaudrury.com)

26 **SKRATCH LABS LLC:**

27 Ian MacGregor  
28 Skratch Labs LLC  
29 2845 29th street, Unit B&C  
30 Boulder, CO 80301  
31 Email: [ian@skratchlabs.com](mailto:ian@skratchlabs.com); [info@skratchlabs.com](mailto:info@skratchlabs.com)

32 And

33 ///

34 ///

1 Mike Laszlo  
2 LaszloLaw  
3 2595 Canyon Blvd #210  
4 Boulder, CO 80302  
5 Email: mlaszlo@laszlolaw.com  
6 Ph: (303) 926-0410

7 With a copy to:  
8 Hazel Ocampo  
9 Greenberg Traurig LLP  
10 18565 Jamboree Road, Suite 500  
11 Irvine, CA 92612  
12 Ph: (949) 732-6545  
13 Email: ocampoh@gtlaw.com

## 14 **12. COURT APPROVAL**

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

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

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

## 23 **13. EXECUTION AND COUNTERPARTS**

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

## 27 **14. DRAFTING**

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



1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
3 equally in the preparation and drafting of this Consent Judgment.

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

5 If a dispute arises with respect to either party's compliance with the terms of this consent  
6 judgment entered by the court, the parties shall meet and confer in person, by telephone, and/or  
7 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion  
8 may be filed in the absence of such a good faith attempt to resolve the dispute beforehand for a  
9 period of at least sixty (60) days from the date the party provides notice to the other party of  
10 the dispute in accordance with the notice provisions in section 11.

11 **16. ENFORCEMENT**

12 Both Parties may, by motion or order to show cause before the Superior Court of  
13 Alameda County, enforce the terms and conditions contained in this Consent Judgment. The  
14 Parties may seek whatever fines, costs, penalties, or remedies as are provided by law for the  
15 other Party's failure to comply with the Consent Judgment.

16 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

23 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
24 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
25 specifically provided in this Consent Judgment, each Party shall bear its own attorneys' fees  
26 and costs in connection with the claims resolved in this Consent Judgment and in its  
27 subsequent enforcement.

28 ///

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

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

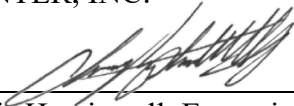
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

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

11 **IT IS SO STIPULATED:**

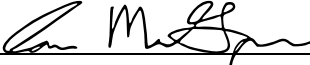
12 Dated: August 30, 2023

ENVIRONMENTAL RESEARCH  
CENTER, INC.

13  
14 By:   
15 Chris Heptinstall, Executive Director

16 Dated: August 31st, 2023

SKRATCH LABS LLC

17  
18   
19 By: Ian MacGregor  
20 Its: CEO

21 **APPROVED AS TO FORM:**

22 Dated: August 30, 2023

23 LOZEAU | DRURY LLP

24 By:   
25 Richard T. Drury  
26 Attorneys for Plaintiff Environmental  
27 Research Center, Inc.  
28

1 Dated: September 1, 2023

GREENBERG TRAURIG LLP

2 

3 By: \_\_\_\_\_

4 Hazel Ocampo

5 Attorney for Defendant Skratch Labs LLC

6  
7 **ORDER AND JUDGMENT**

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

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

11  
12 Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
13 Judge of the Superior Court

# **EXHIBIT A**



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Skratch Labs LLC  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

Michael Laszlo  
(Registered Agent for Skratch Labs LLC)  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

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Nancy O'Malley, District Attorney  
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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

Lisa A. Smittcamp, District Attorney  
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Napa, CA 94559  
CEPD@countyofnapa.org

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SanDiegoDAProp65@sdca.org

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

**VIA ELECTRONIC MAIL**

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San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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DAConsumer.Environmental@sjcda.org

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San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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County Government Center Annex, 4<sup>th</sup>  
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Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District  
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**VIA ELECTRONIC MAIL**

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Jeannie.Barnes@sonoma-county.org

Phillip J. Cline, District Attorney  
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Visalia, CA 95370  
Prop65@co.tulare.ca.us

**VIA ELECTRONIC MAIL**

Gregory D. Totten, District Attorney  
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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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Skratch Labs LLC**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Skratch Labs Sport Energy Chews Sour Cherry – Lead, Mercury**
- 2. Skratch Labs Sport Energy Chews Orange – Lead, Mercury**
- 3. Skratch Labs Sport Energy Chews Raspberry - Lead**

- 4. Skratch Labs Sport Energy Chews Matcha Green Tea & Lemon – Lead, Mercury**
- 5. Skratch Labs Sport Hydration Mix Summer Peach - Lead**
- 6. Skratch Labs Sport Hydration Mix Matcha Green Tea & Lemon - 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.

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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or mercury. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or mercury. Each of these ongoing violations has occurred on every day since May 17, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.



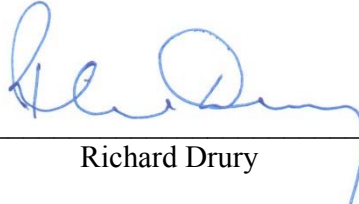
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 17, 2022

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ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Skcratch Labs LLC and its Registered Agent for Service of Process only)

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

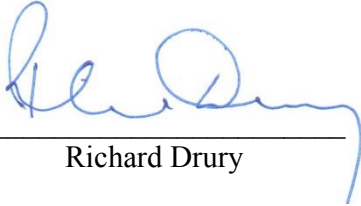
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by  
Skratch Labs LLC**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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: May 17, 2022

  
\_\_\_\_\_  
Richard Drury

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On May 17, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Skratch Labs LLC  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

Michael Laszlo  
(Registered Agent for Skratch Labs LLC)  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 17, 2022

Page 8

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Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney  
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201 Commercial St  
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Orange County  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 17, 2022  
Page 9

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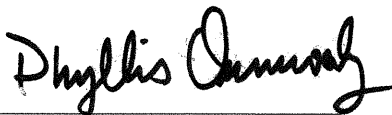
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Jeff W. Reisig, District Attorney  
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301 Second Street  
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cfepd@yolocounty.org

On May 17, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 17, 2022, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

Service List

District Attorney, Alpine  
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County  
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Suite 245  
Oroville, CA 95965

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

District Attorney, Del  
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Crescent City, CA 95531

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Bakersfield, CA 93301

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Boulevard  
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County  
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District Attorney, Los  
Angeles County  
Hall of Justice  
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1200  
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District Attorney,  
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209 West Yosemite  
Avenue  
Madera, CA 93637

District Attorney, Marin  
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Room 130  
San Rafael, CA 94903

District Attorney,  
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Ukiah, CA 95482

District Attorney, Modoc  
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Alturas, CA 96101-4020

District Attorney, Mono  
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Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
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San Bernadino, CA  
92415

District Attorney, San  
Mateo County  
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County  
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District Attorney, Yuba  
County  
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152  
Marysville, CA 95901

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

## APPENDIX A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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

# **EXHIBIT B**



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F 510.836.4205

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

May 26, 2022

Page 2

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**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Skratch Labs LLC**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Skratch Labs Sport Superfuel Drink Mix Raspberry – Lead, Mercury**
- 2. Skratch Labs Sport Recovery Drink Mix Horchata - Lead**
- 3. Skratch Labs Sport Recovery Drink Mix with Coffee - Lead**

- 4. Skratch Labs Sport Recovery Drink Mix with Chocolate - Lead**
- 5. Skratch Labs Sport Vegan Recovery Drink Mix with Chocolate – Lead**
- 6. Skratch Labs Sport Hydration Drink Mix Lemon & Lime - 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.

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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or mercury. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or mercury. Each of these ongoing violations has occurred on every day since May 26, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.



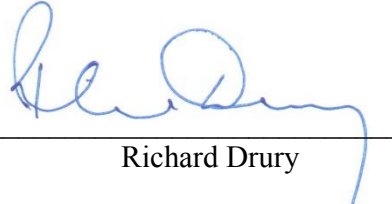
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 26, 2022

Page 5

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Skcratch Labs LLC and its Registered Agent for Service of Process only)

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

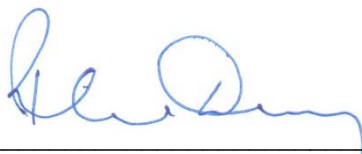
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by  
Skratch Labs LLC**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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: May 26, 2022

  
\_\_\_\_\_  
Richard Drury

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On May 26, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Skratch Labs LLC  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

Michael Laszlo  
(Registered Agent for Skratch Labs LLC)  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

On May 26, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 26, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

May 26, 2022

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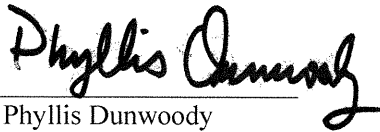
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On May 26, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

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

  
Phyllis Dunwoody

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## APPENDIX A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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

# **EXHIBIT C**



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**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Skratch Labs LLC**

The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**Skratch Labs Vegan Recovery Sport Drink Mix Chocolate - Perfluorooctanoic Acid (PFOA)**

May 12, 2023

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On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause cancer.

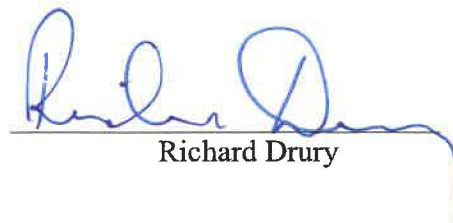
This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed product. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed product, which has exposed and continue to expose numerous individuals within California to the identified chemical, Perfluorooctanoic Acid (PFOA). The consumer exposures that are the subject of this notice result from the recommended use of this product by consumers. The route of exposure to Perfluorooctanoic Acid (PFOA) has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to Perfluorooctanoic Acid (PFOA). The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting this product that they are being exposed to Perfluorooctanoic Acid (PFOA). Each of these ongoing violations has occurred on every day since May 12, 2020, as well as every day since the product was introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) recall the identified product so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for the product sold in the future while reformulating such product to eliminate the exposure, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed product, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury



Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Skcratch Labs LLC and its Registered Agent for Service of Process only)

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

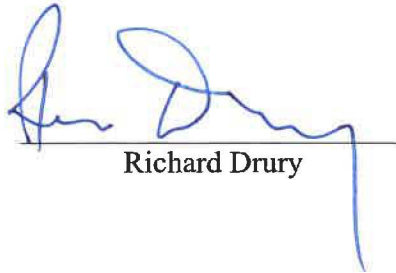
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by  
Skratch Labs LLC**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 12, 2023



Richard Drury

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On May 12, 2023, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Skratch Labs LLC  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

Michael Laszlo  
(Registered Agent for Skratch Labs LLC)  
2845 29<sup>th</sup> St, Ste B & C  
Boulder, CO 80301

On May 12, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 12, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

Barbara Yook, District Attorney  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 12, 2023

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Alexandra.grayner@sfgov.org

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

May 12, 2023

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EPU@da.sccgov.org

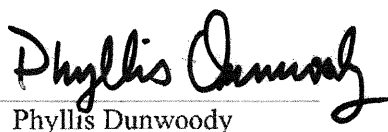
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daspecialops@ventura.org

Nora V. Frimann, City Attorney  
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Proposition65notices@sanjoseca.gov

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

On May 12, 2023, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 12, 2023, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
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, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991
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, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Colusa County 310 6 <sup>th</sup> St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
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, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> 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 <sup>nd</sup> 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		

## APPENDIX A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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

# **EXHIBIT D**

## EXHIBIT D

### Serving Size and Servings Per Day for Sec. 3.1.2; 3.1.3; and 3.1.4

No.	Product	Serving Size	Servings Per Day
1.	Sport Energy Chews	25g	1
2.	Sport Hydration Mix	22g	1
3.	Sport Superfuel Drink Mix	105g	1
4.	Sport Recovery Drink Mix	50g	1
5.	Sport Vegan Recovery Drink Mix	59g	1