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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

**NUTRACAP HOLDINGS LLC,
individually and dba MYOBLOX; and
DOES 1-100**

Defendants.

CASE NO. 23CV039708

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 28, 2023

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On July 28, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against Nutracap Holdings LLC, individually and dba MyoBlox (“MyoBlox”) and Does 1-100.
7 On August 28, 2023, ERC filed a First Amended Complaint (the operative Complaint,
8 hereinafter referred to as “Complaint”) for Injunctive and Declaratory Relief and Civil
9 Penalties pursuant to the provisions of Proposition 65 against MyoBlox and Does 1-100. In
10 this action, ERC alleges that a number of products manufactured, distributed, or sold by
11 MyoBlox contain lead and/or mercury, chemicals listed under Proposition 65 as carcinogens
12 and/or reproductive toxins, and expose consumers to these chemicals at a level requiring a
13 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
14 Product” or collectively as “Covered Products”) are: (1) MyoBlox Blo 3D Boom Pop (lead),
15 (2) MyoBlox Loco Watermelon (lead), (3) MyoBlox Loco Sour Gummy (lead), (4) MyoBlox
16 Blo 3D Bubblegum Sherbet (lead), (5) MyoBlox Skywalk Laser Focus Peach Rings (lead,
17 mercury), (6) MyoBlox Skywalk Laser Focus Red Wave (lead, mercury), (7) MyoBlox
18 Skywalk Laser Focus Purple Haze (lead, mercury), (8) MyoBlox Loco Kiwi Raz (lead,
19 mercury), (9) MyoBlox 24/7 Aminos Complete BCAA + EAA Formula Blood Orange (lead,
20 mercury), (10) MyoBlox Rubix Pyro Carnitine Mango Chamoy (lead), and (11) MyoBlox 24/7
21 Aminos Complete BCAA + EAA Formula Peach Mango (lead).

22 **1.2** ERC and MyoBlox are hereinafter referred to individually as a “Party” or
23 collectively as the “Parties.”

24 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
25 causes, helping safeguard the public from health hazards by reducing the use and misuse of
26 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
27 and encouraging corporate responsibility.

28 **1.4** The term “MyoBlox” as used herein as an entity identifier refers solely to the

1 entity Nutracap Holdings, LLC and specifically excludes any entity not wholly owned, managed,
2 and otherwise controlled by Nutracap Holdings, LLC.

3 **1.5** For purposes of this Consent Judgment, the Parties agree that MyoBlox is a
4 business entity that has employed ten or more persons at all times relevant to this action and
5 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
6 MyoBlox manufactures, distributes, and/or sells the Covered Products.

7 **1.6** The Complaint is based on allegations contained in ERC’s Notices of Violation
8 dated May 18, 2023, May 31, 2023, and June 16, 2023 that were served on the California
9 Attorney General, other public enforcers, and MyoBlox (“Notices”). True and correct copies of
10 the 60-Day Notices dated May 18, 2023, May 31, 2023, and June 16, 2023 are attached hereto
11 as **Exhibits A, B, and C** and each is incorporated herein by reference. More than 60 days have
12 passed since the Notices were served on the Attorney General, public enforcers, and MyoBlox
13 and no designated governmental entity has filed a Complaint against MyoBlox with regard to
14 the Covered Products or the alleged violations.

15 **1.7** ERC’s Notices and Complaint allege that use of the Covered Products by
16 California consumers exposes them to lead and/or mercury without first receiving clear and
17 reasonable warnings from MyoBlox, which is in violation of California Health and Safety
18 Code section 25249.6. MyoBlox denies all material allegations contained in the Notices and
19 Complaint.

20 **1.8** The Parties have entered into this Consent Judgment in order to settle,
21 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
22 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
23 or be construed as an admission by any of the Parties or by any of their respective officers,
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
25 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
26 issue of law, or violation of law.

27 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in

1 any current or future legal proceeding unrelated to these proceedings.

2 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
3 as a Judgment by this Court.

4 **2. JURISDICTION AND VENUE**

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

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

13 **3.1** Beginning on the Effective Date, MyoBlox shall be permanently enjoined from
14 manufacturing for sale in the State of California, “Distributing into the State of California,” or
15 directly selling in the State of California, any Covered Product that exposes a person to a
16 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or a “Daily
17 Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it meets the
18 warning requirements under Section 3.2.

19 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
20 of California” shall mean to directly ship a Covered Product into California for sale in
21 California or to sell a Covered Product to a distributor that MyoBlox knows or has reason to
22 know will sell the Covered Product in California.

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

1 recommended daily servings, then the number of recommended daily servings shall be one.

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


9 **3.2 Clear and Reasonable Warnings**

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

12 **Option 1:**

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

16 **Option 2:**

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

18
19 Myoblox shall use the phrase “cancer and” in the Warning if Myoblox has reason to
20 believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined
21 pursuant to the quality control methodology set forth in Section 3.4 or if Myoblox has reason to
22 believe that another Proposition 65 chemical is present which may require a cancer warning. As
23 identified in the brackets, the warning shall appropriately reflect whether there is lead and/or
24 mercury present in each of the Covered Products, but if there is a chemical present at a level that
25 requires a cancer warning, the chemical requiring use of the phrase “cancer and” in the Warning
26 shall always be identified. Where a warning is being provided for an exposure to a single
27 chemical that is, itself, listed as (a) a carcinogen, (b) a reproductive toxicant, or (c) both a
28 carcinogen and reproductive toxicant, the words “chemicals including” may be deleted from the

1 warning content of Option 1.

2 The Warning shall be securely affixed to or printed upon the label of each Covered
3 Product, and, for Option 1, it must be set off from the other surrounding information and
4 enclosed in a box. For products sold at brick-and-mortar locations in California, the Warning
5 may be provided on a posted sign, shelf tag, or shelf sign at each point of display of the
6 Covered Product in lieu of providing the Warning on the Covered Product’s label. For the
7 Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral
8 triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size
9 no smaller than the height of the word “**WARNING**,” and the word “**WARNING**” shall be in
10 all capital letters and bold print. Where the sign, label or shelf tag for the product is not printed
11 using the color yellow, the symbol may be printed in black and white

12 In addition, for any Covered Product sold over the internet by MyoBlox, the Warning
13 shall appear on the checkout page when a California delivery address is indicated for any
14 purchase of any Covered Product with an asterisk or other identifying method to identify which
15 products on the checkout page are subject to the Warning. The Warning may be provided with
16 a conspicuous hyperlink stating “**WARNING**” in all capital and bold letters so long as the
17 hyperlink goes directly to a page prominently displaying the Warning without content that
18 detracts from the Warning. A warning is not prominently displayed if the purchaser must
19 search for it in the general content of the website. If a Covered Product is being sold by an
20 online third-party seller, known to and authorized to sell such Covered Product by Myoblox,
21 and Myoblox cannot itself post the warning on the authorized online third-party seller’s
22 website, then Myoblox must notify the authorized online third-party seller of its duty to
23 provide an internet warning by complying with Section 3.2.1(B), below. This requirement is
24 subject to the limitations and conditions set forth in Section 3.2.1.

25 The Warning shall be at least the same size as the largest of any other health or safety
26 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all
27 capital letters and in bold print. No statements intended to or likely to have the effect of
28 diminishing the impact of the Warning on the average lay person shall accompany the Warning.

1 Further no statements may accompany the Warning that state or imply that the source of the listed
2 chemical has an impact on or results in a less harmful effect of the listed chemical.

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

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

10 **3.2.1** In the event Myoblox is not directly selling a Covered Product to
11 consumers in California, Myoblox may comply with the warning requirements of this Consent
12 Judgment either (A) by providing a warning on the Covered Product’s label that satisfies Section
13 3.2 of the Consent Judgment, (B) by providing a written notice directly to the authorized agent for
14 the business to which Myoblox is selling or transferring the Covered Product or (C) by providing a
15 written notice directly to the to the authorized agent for a retail seller of the Covered Product, so
16 long as the business or retail seller to which Myoblox is providing the notice is subject to
17 Proposition 65. The written notice shall:

18 (1) State that the Covered Product may result in an exposure to one or more listed
19 chemicals;

20 (2) Include the exact name or description of the Covered Product or specific identifying
21 information for the Covered Product such as a Universal Product Code or other
22 identifying designation;

23 (3) Include all necessary warning material, such as labels, labeling, shelf signs or tags, and
24 warning language for the Covered Product if sold on the internet, that satisfies Section
25 3.2 of the Consent Judgment;

26 (4) Inform the business or retail seller that it is responsible for the placement and
27 maintenance of warning materials, including warnings for products sold over the
28 internet, that it receives along with the written notice; and

1 (5) Be renewed annually during the period in which the Covered Product is sold in
2 California by a retail seller.

3 If Myoblox is providing a written notice to a business who is subject to Proposition 65,
4 either by providing the written notice to the authorized agent for the business to which it is selling
5 or transferring the Covered Product or to the authorized agent for the retail seller, confirmation of
6 receipt of the notice and any renewed notices must be received electronically or in writing from
7 the authorized agent to which Myoblox sent the notice. Where a business has not designated an
8 authorized agent, Myoblox may serve the notice on the legal agent for service of process for the
9 business. An additional notice is required within 90 days after Myoblox determines that a
10 different or additional chemical name or endpoint (cancer or reproductive toxicity) should be
11 included in the Warning.

12 Myoblox may not satisfy its obligation to provide a warning pursuant to Section 3.2 of this
13 Consent Judgment by providing notice to a business or retail seller pursuant to Section 3.2.1 if the
14 business or retail seller to which Myoblox would provide such notice is not subject to Proposition
15 65.

16 Unless otherwise stated, this section does not, and is not intended to, impose any
17 obligation upon MyoBlox exceeding those obligations set forth 27 C.C.R. § 25600.2 (2024).

18 **3.3 Conforming Covered Products**

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

25 **3.4 Testing and Quality Control Methodology**

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

1 Covered Products, in the form intended for sale to the end-user, which MyoBlox intends to sell or is
2 manufacturing for sale in California, directly selling to a consumer in California or “Distributing
3 into the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning
4 is required for a Covered Product during each of five consecutive years, then the testing
5 requirements of this Section will no longer be required as to that Covered Product. However, if
6 during or after the five-year testing period, MyoBlox changes ingredient suppliers for any of the
7 Covered Products and/or reformulates any of the Covered Products, MyoBlox shall test that
8 Covered Product annually for at least four (4) consecutive years after such change is made. This
9 provision is subject to the conditions and limitations set forth in Section 3.4.7 herein.

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

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

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

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

25 **3.4.6** Within thirty (30) days of ERC’s written request, MyoBlox shall deliver lab
26 reports obtained pursuant to Section 3.4 to ERC. MyoBlox shall retain all test results and
27 documentation for a period of five years from the date of each test. Prior to or at the time of making
28 a written request under this section, ERC shall provide to MyoBlox information and/or evidence

1 demonstrating that the Covered Product(s) for which such lab reports are being requested is (or are)
2 being sold in California without a Warning. MyoBlox shall have no obligation to produce test
3 results under this Section absent receipt of such information from ERC.

4 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to any
5 Covered Product for which Myoblox is providing a Warning, continuously and without interruption
6 from the Effective Date, pursuant to Section 3.2 or that otherwise complies with Section 3.2.1 if
7 applicable, of this Consent Judgment. In the event a Warning is provided after the Effective Date
8 but Myoblox thereafter ceases to provide the Warning, the testing and reporting requirements of
9 Section 3.4 of this Consent Judgment shall apply beginning within one year after the date the
10 Warning ceases to be provided, unless Myoblox can show to the satisfaction of ERC that the
11 cessation in providing the Warning was a temporary error that was resolved when discovered.

12 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
13 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
14 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent
15 Judgment is intended by either Party to set a precedent for the level of lead or other chemicals
16 that is permissible in consumer products under Proposition 65.

17 **4. SETTLEMENT PAYMENT**

18 **4.1** In full satisfaction of all potential civil penalties, additional settlement
19 payments, attorney's fees, and costs, MyoBlox shall make a total payment of \$125,000.00
20 ("Total Settlement Amount") to ERC in eighteen periodic payments (the "Periodic Payments")
21 according to the following payment schedule ("Due Dates"):

- 22 • Payment 1 - \$3,000.00 due on the first day of the month following the Effective
23 Date.
- 24 • Payments 2 through 6 - \$3,000.00 each due on the first day of the month following
25 the previous payment Due Date.
- 26 • Payments 7 through 12 - \$6,000.00 each due on the first day of the month following
27 the previous payment Due Date.
- 28 • Payments 13 through 16 - \$11,833.33 each due on the first day of the month

1 following the previous payment Due Date.

- 2 • Payments 17 and 18 - \$11,833.34 each due on the first day of the month following the
3 previous payment Due Date.

4 MyoBlox shall make these payments by wire transfer to ERC's account, for which ERC will
5 give MyoBlox the necessary account information. The Total Settlement Amount shall be
6 apportioned as follows:

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

12 **4.3** \$7,982.43 shall be distributed to ERC as reimbursement to ERC for reasonable
13 costs incurred in bringing this action.

14 **4.4** \$38,720.00 shall be distributed to Michael Freund & Associates as
15 reimbursement of ERC's attorney fees, while \$68,297.57 shall be distributed to ERC for its in-
16 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
17 costs.

18 **4.6** In the event that MyoBlox fails to remit, in full, any of the Periodic Payments
19 owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable Due Date,
20 MyoBlox shall be deemed to be in material breach of its obligations under this Consent
21 Judgment. ERC shall provide written notice of the delinquency and the amount of the
22 delinquent payment amount owed (the "delinquent payment") to MyoBlox via electronic mail.
23 If MyoBlox fails to deliver the delinquent payment within five (5) days from the written notice,
24 the delinquent payment shall immediately begin accruing interest at the statutory judgment
25 interest rate provided in the California Code of Civil Procedure section 685.010. The
26 delinquent payment shall stop accruing interest when it is paid in full. Additionally, MyoBlox
27 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect any
28 delinquent payment, or portion thereof, due under this Consent Judgment.

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
4 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
5 modified consent judgment.

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

18 **5.3** In the event that MyoBlox initiates or otherwise requests a modification under
19 Section 5.1, and the meet and confer process leads to a joint motion or joint application for a
20 modification of the Consent Judgment, MyoBlox shall reimburse ERC its costs and reasonable
21 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the
22 motion or application.

23 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
24 **JUDGMENT**

25 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
26 terminate this Consent Judgment.

27 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
28 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall

1 notify MyoBlox in a reasonably prompt manner of its test results, including information
2 sufficient to permit MyoBlox to identify the Covered Products at issue. MyoBlox shall, within
3 thirty (30) days following such notice, provide ERC with testing information, from an
4 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
5 demonstrating MyoBlox's compliance with the Consent Judgment. Prior to or at the time of
6 making any allegation and/or notice under this section, ERC shall provide to MyoBlox
7 information and/or evidence demonstrating that the Covered Product(s) for which such testing
8 information is being requested is (or are) being sold in California without a Warning and shall
9 provide the test results obtained by ERC to MyoBlox. MyoBlox shall have no obligation to
10 produce test results under this Section absent receipt of such information and/or evidence and
11 test results from ERC. The Parties shall first attempt to resolve the matter prior to ERC taking
12 any further legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

21 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
22 behalf of itself and in the public interest, and MyoBlox and its respective officers, directors,
23 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
24 franchisees, licensees, customers (not including private label customers of Myoblox),
25 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
26 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
27 of them (collectively, "Released Parties"). Businesses and retail sellers, including online third-
28 party sellers, who receive notice from Myoblox pursuant to Section 3.2.1 and who do not

1 provide the Warning after being instructed or notified by Myoblox to do so, as outlined in
2 Section 3.2.1, are not released from liability for violations of Proposition 65.

3 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
4 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
5 and/or mercury from the Covered Products as set forth in the Notices of Violation. ERC, on
6 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
7 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
8 expenses asserted, or that could have been asserted from actual or alleged exposure to the
9 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
10 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
11 lead and/or mercury up to and including the Effective Date. Businesses and retail sellers,
12 including online third-party sellers, who receive notice from Myoblox pursuant to Section
13 3.2.1 and who do not provide the Warning after being instructed or notified by Myoblox to do
14 so, as outlined in Section 3.2.1, are not released from liability for violations of Proposition 65.

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

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

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

5 ERC on behalf of itself only, and MyoBlox on behalf of itself only, acknowledge and
6 understand the significance and consequences of this specific waiver of California Civil Code
7 section 1542.

8 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
9 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
10 exposures to lead and/or mercury in the Covered Products as set forth in the Notices and
11 Complaint.

12 **8.6** Nothing in this Consent Judgment is intended to apply to any of MyoBlox's
13 products other than the Covered Products.

14 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

25 ///

26 ///

27 ///

28 ///

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

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

7 With a copy to:
8 Michael Freund
9 Michael Freund & Associates
10 1919 Addison Street, Suite 104
11 Berkeley, CA 94704
12 Telephone: (510) 499-1992
13 Email: freund1@aol.com

14 **FOR NUTRACAP HOLDINGS LLC, individually and dba MYOBLOX:**

15 Daisy Leath, Corporate Development Director, Nutracap Holdings, LLC
16 2825 Pacific Drive
17 Norcross, Georgia 30017
18 Telephone: (404) 457-2810
19 Email: daisy@nutracapusa.com

20 With a copy to:
21 C.L. Parker
22 C.L. Parker LLC
23 4080 McGinnis Ferry Rd, Suite 401
24 Alpharetta, GA 30005
25 Telephone: (770) 851-6718
26 Email: cl@clparkerllc.com

27 **12. COURT APPROVAL**

28 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
Motion for Court Approval. The Parties shall use their best efforts to support entry of this
Consent Judgment.

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

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

///
///

1 **13. EXECUTION AND COUNTERPARTS**

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

5 **14. DRAFTING**

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

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

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

20 **16. ENFORCEMENT**

21 ERC may, by motion or order to show cause before the Superior Court of Alameda
22 County, enforce the terms and conditions contained in this Consent Judgment. In any action
23 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
24 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
25 To the extent the failure to comply with the Consent Judgment constitutes a violation of
26 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
27 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
28 provided by law for failure to comply with Proposition 65 or other laws.

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

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

22 **IT IS SO STIPULATED:**


23
24 Dated: 8/23/, 2024

ENVIRONMENTAL RESEARCH
CENTER, INC.

25
26 By: 
27 Chris Heptinstall, Executive Director

1 Dated: August 22, 2024

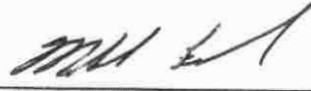
NUTRACAP HOLDINGS LLC,
individually and dba MYOBLOX

2
3
4 By: 
5 Its: CEO

6 **APPROVED AS TO FORM:**


7
8 Dated: 8/24/, 2024

MICHAEL FREUND & ASSOCIATES

9
10 By: 
11 Michael Freund
12 Attorney for Plaintiff Environmental
Research Center, Inc.

13 Dated: August 22, 2024

C.L. PARKER LLC

14
15 By: 
16 C. L. Parker
17 Attorney for Defendant Nutracap
18 Holdings LLC, individually and dba
19 MyoBlox
20
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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2024

Judge of the Superior Court

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EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

May 18, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Nutracap Holdings LLC, individually and dba MyoBlox

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. MyoBlox Blo 3D Boom Pop - Lead**
- 2. MyoBlox Loco Watermelon - Lead**
- 3. MyoBlox Loco Sour Gummy - Lead**
- 4. MyoBlox Blo 3D Bubblegum Sherbet – Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 18, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Nutracap Holdings LLC, individually and dba MyoBlox and its Registered Agents 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 Nutracap Holdings LLC, individually and dba MyoBlox

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: May 18, 2023



Michael Freund

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 18, 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 President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
2825 Pacific Dr, Ste C
Norcross, GA 30071

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
8180 NW 36th St, Ste 301
Doral, FL 33166

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
6080 McDonough Dr NW Ste A
Norcross, GA 30093

Matthew Shiebler
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
8180 NW 36th St, Ste 327
Doral, FL 33166

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
6080 McDonough Dr NW Ste 8
Norcross, GA 30093

A Registered Agent, Inc.
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
8 The Green, Ste A
Dover, DE 19901

Registered Agents, Inc.
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
300 Colonial Center Parkway
Ste 100 N
Roswell, GA 30076

On May 18, 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 18, 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:

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

May 18, 2023

Page 5

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

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

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

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

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

Devin Chandler, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
dchandler@co.lassen.ca.us

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

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

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney
Nevada County
201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney
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10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

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

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

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

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

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

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

May 18, 2023

Page 6

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Nora V. Frimann, City Attorney
San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatty.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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

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San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

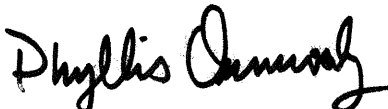
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

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

On May 18, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on May 18, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

May 18, 2023

Page 7

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Stanislaus
County
832 12th Street, Ste 300

Modesto, CA 95354

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

May 31, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Nutracap Holdings LLC, individually and dba MyoBlox

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. MyoBlox Skywalk Laser Focus Peach Rings – Lead, Mercury**
- 2. MyoBlox Skywalk Laser Focus Red Wave – Lead, Mercury**
- 3. MyoBlox Skywalk Laser Focus Purple Haze – Lead, Mercury**
- 4. MyoBlox Loco Kiwi Raz - Lead, 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.

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


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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 31, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Nutracap Holdings LLC, individually and dba MyoBlox and its Registered Agents 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 Nutracap Holdings LLC, individually and dba MyoBlox

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: May 31, 2023



Michael Freund

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 31, 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 President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
2825 Pacific Dr, Ste C
Norcross, GA 30071

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
8180 NW 36th St, Ste 301
Doral, FL 33166

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
6080 McDonough Dr NW Ste A
Norcross, GA 30093

Matthew Shiebler
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
8180 NW 36th St, Ste 327
Doral, FL 33166

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
6080 McDonough Dr NW Ste 8
Norcross, GA 30093

A Registered Agent, Inc.
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
8 The Green, Ste A
Dover, DE 19901

Registered Agents, Inc.
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
300 Colonial Center Parkway
Ste 100 N
Roswell, GA 30076

On May 31, 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 31, 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:

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

May 31, 2023

Page 5

Nancy O'Malley, District Attorney
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CEPDProp65@acgov.org

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Fresno, CA 93721
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Prop65DA@co.monterey.ca.us

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Prop65notice@da.ocgov.com

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SanDiegoDAProp65@sdcca.org

Mark Ankcorn, Deputy City Attorney
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CityAttyProp65@sandiego.gov

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

May 31, 2023

Page 6

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
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Alexandra.grayner@sfgov.org

Henry Lifton, Deputy City Attorney
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Prop65@sfcityatty.org

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DAConsumer.Environmental@sjcda.org

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

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

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EPU@da.sccgov.org

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200 E. Santa Clara Street, 16th Floor
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Prop65DA@santacruzcounty.us

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Jeannie.Barnes@sonoma-county.org

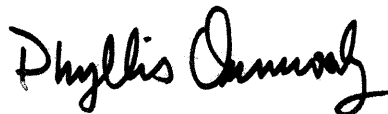
Phillip J. Cline, District Attorney
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Ventura, CA 93009
daspecialops@ventura.org

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

On May 31, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on May 31, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

May 31, 2023

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Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San Benito
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Hollister, CA 95023

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

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

District Attorney, Shasta
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1355 West Street
Redding, CA 96001

District Attorney, Sierra
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Floor
Downieville, CA 95936

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

District Attorney, Solano
County
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Fairfield, CA 94533

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

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

District Attorney, Tehama
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Red Bluff, CA 96080

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT C

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

June 16, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Nutracap Holdings LLC, individually and dba MyoBlox

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. MyoBlox 24/7 Aminos Complete BCAA + EAA Formula Blood Orange – Lead, Mercury**
- 2. MyoBlox Rubix Pyro Carnitine Mango Chamoy – Lead**
- 3. MyoBlox 24/7 Aminos Complete BCAA + EAA Formula Peach Mango – Lead**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 16, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Nutracap Holdings LLC, individually and dba MyoBlox and its Registered Agents 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 Nutracap Holdings LLC, individually and dba MyoBlox

I, Michael Freund, declare:

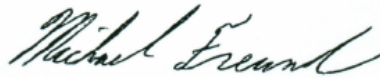
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

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

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

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



Dated: June 16, 2023

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On June 16, 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 President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
2825 Pacific Dr, Ste C
Norcross, GA 30071

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
8180 NW 36th St, Ste 301
Doral, FL 33166

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
6080 McDonough Dr NW Ste A
Norcross, GA 30093

Matthew Shiebler
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
8180 NW 36th St, Ste 327
Doral, FL 33166

Current President or CEO
Nutracap Holdings LLC, individually
and dba MyoBlox
6080 McDonough Dr NW Ste 8
Norcross, GA 30093

A Registered Agent, Inc.
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
8 The Green, Ste A
Dover, DE 19901

Registered Agents, Inc.
(Registered Agent for Nutracap Holdings LLC,
individually and dba MyoBlox)
300 Colonial Center Parkway
Ste 100 N
Roswell, GA 30076

On June 16, 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 June 16, 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:

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

June 16, 2023

Page 5

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SanDiegoDAProp65@sdca.org

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CityAttyProp65@sandiego.gov

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

June 16, 2023

Page 6

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
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Alexandra.grayner@sfgov.org

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Jeannie.Barnes@sonoma-county.org

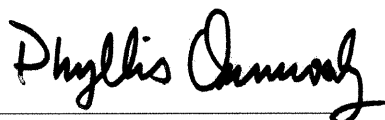
Phillip J. Cline, District Attorney
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Gregory D. Totten, District Attorney
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Ventura, CA 93009
daspecialops@ventura.org

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

On June 16, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on June 16, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

June 16, 2023

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Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San Benito
County
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Hollister, CA 95023

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

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

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

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

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

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

District Attorney, Stanislaus
County
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Modesto, CA 95354

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

District Attorney, Tehama
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Red Bluff, CA 96080

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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