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

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

20 **Plaintiff,**

21 **vs.**

22 **LEGENDAIRY MILK, LLC and DOES 1-**
23 **100**

24 **Defendants.**

CASE NO. 23CV043310

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 11, 2023

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On September 11, 2023, Plaintiff Environmental Research Center, Inc.
27 (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this
28 action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the
“Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5

1 *et seq.* (“Proposition 65”), against Legendairy Milk, LLC (“Legendairy Milk”) and Does 1-
2 100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by
3 Legendairy Milk contain lead, a chemical listed under Proposition 65 as a carcinogen and
4 reproductive toxin, and exposes consumers to this chemical at a level requiring a Proposition
5 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
6 collectively as “Covered Products”) are: (1) Legendairy Milk Lechita, (2) Legendairy Milk
7 Milkapalooza, (3) Legendairy Milk Liquid Gold, and (4) Legendairy Milk Cash Cow.

8 **1.2** ERC and Legendairy Milk are hereinafter referred to individually as a “Party”
9 or collectively as the “Parties.”

10 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
11 causes, helping safeguard the public from health hazards by reducing the use and misuse of
12 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
13 and encouraging corporate responsibility.

14 **1.4** For purposes of this Consent Judgment, the Parties agree that Legendairy Milk is a
15 business entity that has employed ten or more persons at all times relevant to this action, and
16 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
17 Legendairy Milk manufactures, distributes, and/or sells the Covered Products.

18 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
19 dated June 29, 2023 that was served on the California Attorney General, other public enforcers,
20 and Legendairy Milk (“Notice”). A true and correct copy of the 60-Day Notice dated June 29,
21 2023 is attached hereto as **Exhibit A** and incorporated herein by reference. More than 60 days
22 have passed since the Notice was served on the Attorney General, public enforcers, and
23 Legendairy Milk and no designated governmental entity has filed a Complaint against
24 Legendairy Milk with regard to the Covered Products or the alleged violations.

25 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products by
26 California consumers exposes them to lead without first receiving clear and reasonable
27 warnings from Legendairy Milk, which is in violation of California Health and Safety Code
28 section 25249.6. Legendairy Milk denies all material allegations contained in the Notice and

1 Complaint.

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

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

12 **1.9** The Effective Date of this Consent Judgment is the date on which ERC provides
13 written notice to Legendairy Milk that it has been entered as a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

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

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

24 **3.1** Beginning 90 days after the Effective Date (“Compliance Date”), Legendairy
25 Milk shall be permanently enjoined from manufacturing for sale in the State of California,
26 “Distributing into the State of California,” or directly selling in the State of California, any
27 Covered Product that exposes a person to a “Daily Lead Exposure Level” of more than 0.5
28 micrograms of lead per day unless it meets the warning requirements under Section 3.2.

1 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that Legendairy Milk knows or has
4 reason to know will sell the Covered Product in California.

5 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
6 Level” shall be measured in micrograms, and shall be calculated using the following formula:
7 micrograms of lead per gram of product, multiplied by grams of product per serving of the
8 product (using the largest serving size appearing on the product label), multiplied by servings
9 of the product per day (using the largest number of recommended daily servings appearing on
10 the label), which equals micrograms of lead exposure per day. If the label contains no
11 recommended daily servings, then the number of recommended daily servings shall be one.

12 **3.2 Clear and Reasonable Warnings**

13 If Legendairy Milk is required to provide a warning pursuant to Section 3.1, it shall use
14 one of the following warning statements (“Warning”):

- 15
- 16 1) **⚠WARNING:** Consuming this product can expose you to chemicals
17 including lead, which is known to the State of California to cause [cancer
18 and] birth defects or other reproductive harm. For more information go to
19 www.P65Warnings.ca.gov/food.
- 20 2) **⚠WARNING:** [Cancer and]Reproductive Harm – www.P65Warnings.ca.gov/food.

21 Legendairy Milk shall use the phrase “cancer and” in the Warning if Legendairy Milk has
22 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
23 determined pursuant to the quality control methodology set forth in Section 3.4 or if Legendairy
24 Milk has reason to believe that another Proposition 65 chemical is present which may require a
25 cancer warning. A symbol consisting of a black exclamation point in a yellow equilateral triangle
26 with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller
27 than the height of the word “WARNING,” and the word “WARNING” shall be in all capital
28 letters and bold print. Where the sign, label or shelf tag for the product is not printed using the
color yellow, the symbol may be printed in black and white.

1 The Warning shall be prominently displayed on the Covered Product label. For
2 Products sold in brick-and-mortar stores, Legendary Milk may prominently display the
3 Warning on a placard, shelf tag, or sign, provided that the Warning is displayed with such
4 conspicuousness, as compared with other words, statements, or designs on the placard, shelf
5 tag, or sign, as to render it likely to be read and understood by an ordinary individual prior to
6 sale, in lieu of providing the Warning on the Covered Product's label. If the Option 2 (Short-
7 Form) Warning is utilized, it must be in a type size no smaller than the largest type size used
8 for other consumer information on the Covered Product. In no case shall an Option 2 (Short-
9 Form) Warning displayed on a Covered Product's label appear in a type size smaller than 6-
10 point type. In addition, for any Covered Product sold over the internet, the Warning shall
11 appear on the checkout page when a California delivery address is indicated for any purchase
12 of any Covered Product. An asterisk or other identifying method must be utilized to identify
13 which products on the checkout page are subject to the Warning. In no event shall any internet
14 or website Warning be contained in or made through a link.

15 No statements intended to or likely to have the effect of diminishing the impact of the
16 Warning on the average lay person shall accompany the Warning. Further no statements may
17 accompany the Warning that state or imply that the source of the listed chemical has an impact
18 on or results in a less harmful effect of the listed chemical.

19 Legendary Milk must display the above Warning with such conspicuousness, as
20 compared with other words, statements or designs on the label, or on its website, if applicable, to
21 render the Warning likely to be read and understood by an ordinary individual under customary
22 conditions of purchase or use of the product. Where a sign or label used to provide the Warning
23 for a Covered Product includes consumer information about the Covered Product in a language
24 other than English, the Warning must also be provided in that language in addition to English.

25 For purposes of this Consent Judgment, the term "label" means a display of written,
26 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
27 container or wrapper.

28 So long as Legendary Milk can provide documentation, if requested in writing by ERC,

1 Covered Products manufactured and not in the possession or under the control of Legendary Milk
2 on or prior to the Compliance Date, or that have been shipped or Distributed into the State of
3 California by Legendary Milk prior to the Effective Date, are not bound by the injunctive terms
4 set forth in this Section 3, including but not limited to the Daily Lead Exposure Level and
5 Warning and Testing Requirements, and are instead permitted to be sold as is to California
6 consumers and are expressly released by Section 8.

7 **3.3 Conforming Covered Products**

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

13 **3.4 Testing and Quality Control Methodology**

14 **3.4.1** Beginning within one year of the Compliance Date, Legendary Milk
15 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
16 four consecutive years by arranging for testing of three (3) randomly selected samples of each
17 of the Covered Products, in the form intended for sale to the end-user, which Legendary Milk
18 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
19 California or “Distributing into the State of California.” If tests conducted pursuant to this
20 Section demonstrate that no Warning is required for a Covered Product during each of four
21 consecutive years, then the testing requirements of this Section will no longer be required as to
22 that Covered Product.

23 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
24 lead detection result of the three (3) randomly selected samples of the Covered Products will
25 be controlling.

26 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
27 laboratory method that complies with the performance and quality control factors appropriate
28 for the method used, including limit of detection and limit of quantification, sensitivity,

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

4 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
5 independent third party laboratory certified by the California Environmental Laboratory
6 Accreditation Program or an independent third-party laboratory that is registered with the
7 United States Food & Drug Administration.

8 **3.4.5** Nothing in this Consent Judgment shall limit Legendairy Milk’s ability
9 to conduct, or require that others conduct, additional testing of the Covered Products, including
10 the raw materials used in their manufacture, and any such testing shall not be governed by this
11 Section.

12 **3.4.6** Within sixty (60) days of ERC’s written request, Legendairy Milk shall
13 deliver lab reports obtained pursuant to Section 3.4 to ERC. Legendairy Milk shall retain all
14 test results and documentation for a period of three years from the date of each test. ERC shall
15 treat all documents provided by Legendairy Milk pursuant to this Section as confidential.

16 **4. SETTLEMENT PAYMENT**

17 **4.1** In full satisfaction of all potential civil penalties, additional settlement
18 payments, attorney’s fees, and costs, Legendairy Milk shall make a total payment of
19 \$90,000.00 (“Total Settlement Amount”) to ERC within five (5) days of the Effective Date
20 (“Due Date”). Legendairy Milk shall make this payment by wire transfer to ERC’s account, for
21 which ERC will give Legendairy Milk the necessary account information. The Total
22 Settlement Amount shall be apportioned as follows:

23 **4.2** \$29,250.00 shall be considered a civil penalty pursuant to California Health and
24 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$21,937.50) of the civil penalty to
25 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
27 Code section 25249.12(c). ERC will retain the remaining 25% (\$7,312.50) of the civil penalty.

28 **4.3** \$1,998.41 shall be distributed to ERC as reimbursement to ERC for reasonable

1 costs incurred in bringing this action.

2 **4.4** \$21,875.27 shall be distributed to ERC as an Additional Settlement Payment
3 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
4 and 3204. ERC will utilize the ASP for activities that address the same public harm as
5 allegedly caused by Defendant in this matter. These activities are detailed below and support
6 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
7 dietary supplement products in California. ERC’s activities have had, and will continue to
8 have, a direct and primary effect within the State of California because California consumers
9 will be benefitted by the reduction and/or elimination of exposure to lead in dietary
10 supplements and/or by providing clear and reasonable warnings to California consumers prior
11 to ingestion of the products.

12 Based on a review of past years’ actual budgets, ERC is providing the following list of
13 activities ERC engages in to protect California consumers through Proposition 65 citizen
14 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
15 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing
16 dietary supplement products that may contain lead and are sold to California consumers. This
17 work includes continued monitoring and enforcement of past consent judgments and
18 settlements to ensure companies are in compliance with their obligations thereunder, with a
19 specific focus on those judgments and settlements concerning lead. This work also includes
20 investigation of new companies that ERC does not obtain any recovery through settlement or
21 judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (up to 10-20%): maintaining
22 ERC’s Voluntary Compliance Program by acquiring products from companies, developing and
23 maintaining a case file, testing products from these companies, providing the test results and
24 supporting documentation to the companies, and offering guidance in warning or implementing
25 a self-testing program for lead in dietary supplement products; and (3) “GOT LEAD”
26 PROGRAM (up to 5%): maintaining ERC’s “Got Lead?” Program which reduces the numbers
27 of contaminated products that reach California consumers by providing access to free testing
28 for lead in dietary supplement products (Products submitted to the program are screened for

1 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
2 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
3 that submitted the product).

4 ERC shall be fully accountable in that it will maintain adequate records to document
5 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
6 are being spent only for the proper, designated purposes described in this Consent Judgment.
7 ERC shall provide the Attorney General, within thirty days of any request, copies of
8 documentation demonstrating how such funds have been spent.

9 **4.5** \$12,925.00 shall be distributed to Michael Freund & Associates as
10 reimbursement of ERC's attorney fees, while \$23,951.32 shall be distributed to ERC for its in-
11 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
12 costs.

13 **4.6** In the event that Legendairy Milk fails to remit the Total Settlement Amount
14 owed under Section 4 of this Consent Judgment on or before the Due Date, Legendairy Milk
15 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
16 shall provide written notice of the delinquency to Legendairy Milk via electronic mail. If
17 Legendairy Milk fails to deliver the Total Settlement Amount within five (5) days from the
18 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
19 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
20 Legendairy Milk agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
21 collect the payment due under this Consent Judgment.

22 **5. MODIFICATION OF CONSENT JUDGMENT**

23 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
24 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
25 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
26 modified consent judgment.

27 **5.2** If Legendairy Milk seeks to modify this Consent Judgment under Section 5.1,
28 then Legendairy Milk must provide written notice to ERC of its intent ("Notice of Intent"). If

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

11 **5.3** In the event that Legendairy Milk initiates or otherwise requests a modification
12 under Section 5.1, and the meet and confer process leads to a joint motion or joint application
13 for a modification of the Consent Judgment, Legendairy Milk shall reimburse ERC its costs and
14 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
15 arguing the motion or application.

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

18 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
19 terminate this Consent Judgment.

20 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
21 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
22 inform Legendairy Milk in a reasonably prompt manner of its test results, including information
23 sufficient to permit Legendairy Milk to identify the Covered Products at issue. Legendairy Milk
24 shall, within sixty (60) days following such notice, provide ERC with testing information, from
25 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
26 demonstrating Legendairy Milk's compliance with the Consent Judgment. The Parties shall
27 first attempt to resolve the matter prior to ERC taking any further legal action.

28 ///

1 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
10 on behalf of itself and in the public interest, and Legendairy Milk and its respective officers,
11 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
12 franchisees, licensees, customers (not including private label customers of Legendairy Milk),
13 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
14 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
15 of them (collectively, "Released Parties").

16 **8.2** ERC, acting in the public interest, releases the Released Parties from any
17 and all claims for violations of Proposition 65 up through the Compliance Date based on
18 exposure to lead from the Covered Products as set forth in the Notice of Violation. ERC, on
19 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
20 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
21 expenses asserted, or that could have been asserted from the handling, use, or consumption of
22 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
23 regulations arising from the failure to provide Proposition 65 warnings on the Covered
24 Products regarding lead up to and including the Compliance Date.

25 **8.3** ERC on its own behalf only, and Legendairy Milk on its own behalf only,
26 further waive and release any and all claims they may have against each other for all actions or
27 statements made or undertaken in the course of seeking or opposing enforcement of
28 Proposition 65 in connection with the Notice and Complaint up through and including the

1 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
2 right to seek to enforce the terms of this Consent Judgment.

3 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
4 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
5 discovered. ERC on behalf of itself only, and Legendairy Milk on behalf of itself only,
6 acknowledge that this Consent Judgment is expressly intended to cover and include all such
7 claims up through and including the Compliance Date, including all rights of action therefore.
8 ERC and Legendairy Milk acknowledge that the claims released in Sections 8.2 and 8.3 above
9 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
10 any such unknown claims. California Civil Code section 1542 reads as follows:

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

15 ERC on behalf of itself only, and Legendairy Milk on behalf of itself only, acknowledge and
16 understand the significance and consequences of this specific waiver of California Civil Code
17 section 1542.

18 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
19 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
20 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

21 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
22 environmental exposures arising under Proposition 65, nor shall it apply to any of Legendairy
23 Milk's products other than the Covered Products.

24 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

28 ///

1 **10. GOVERNING LAW**

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

4 **11. PROVISION OF NOTICE**

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

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

9 Chris Heptinstall, Executive Director, Environmental Research Center
10 3111 Camino Del Rio North, Suite 400
11 San Diego, CA 92108
12 Ph: (619) 500-3090
13 Email: chris.heptinstall@erc501c3.org

14 With a copy to:
15 Michael Freund
16 Michael Freund & Associates
17 1919 Addison Street, Suite 105
18 Berkeley, CA 94704
19 Telephone: (510) 499-1992
20 Email: freund1@aol.com

21 **FOR LEGENDAIRY MILK, LLC:**

22 Joe Feehan, CFO and COO, Legendairy Milk
23 1007 S. Heatherwilde Blvd., Unit 100
24 Pflugerville, TX 78660
25 Telephone: (512) 431-8680
26 Email: joe@legendairymilk.com

27 With a copy to:
28 Matthew R. Orr
Amin Talati Wasserman
515 South Flower Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 933-2330
Email: matt@amintalati.com

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a

1 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
2 Consent Judgment.

3 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
4 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
5 prior to the hearing on the motion.

6 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
7 void and have no force or effect.

8 **13. EXECUTION AND COUNTERPARTS**

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

12 **14. DRAFTING**

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

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

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

27 **16. ENFORCEMENT**

28 ERC may, by motion or order to show cause before the Superior Court of Alameda

1 County, enforce the terms and conditions contained in this Consent Judgment. In any action
2 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
3 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
4 To the extent the failure to comply with the Consent Judgment constitutes a violation of
5 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
6 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
7 provided by law for failure to comply with Proposition 65 or other laws.

8 **17. ENTIRE AGREEMENT, AUTHORIZATION**

9 **17.1** This Consent Judgment contains the sole and entire agreement and
10 understanding of the Parties with respect to the entire subject matter herein, including any and
11 all prior discussions, negotiations, commitments, and understandings related thereto. No
12 representations, oral or otherwise, express or implied, other than those contained herein have
13 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
14 herein, shall be deemed to exist or to bind any Party.

15 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

25 (2) Make the findings pursuant to California Health and Safety Code section
26 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment; and

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

1 IT IS SO STIPULATED:


2
3 Dated: 12/7/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: 
6 Chris Heptinstall, Executive Director

7 Dated: December 5, 2023


LEGENDAIRY MILK, LLC

8
9
10 
11 By: Joe Feehan
12 Its: Chief operating officer

13
14
15 APPROVED AS TO FORM:

16 Dated: 12/7/, 2023

MICHAEL FREUND & ASSOCIATES

17
18 By: 
19 Michael Freund
20 Attorney for Plaintiff Environmental
21 Research Center, Inc.

22 Dated: December 6, 2023

AMIN TALATI WASSERMAN

23
24 By: Matt Orr
25 Matthew R. Orr
26 Attorney for Defendant Legendary
27 Milk, LLC
28

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: _____, 2023

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.

June 29, 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:

Legendairy Milk, LLC

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. Legendairy Milk Lechita - Lead**
- 2. Legendairy Milk Milkapalooza - Lead**
- 3. Legendairy Milk Liquid Gold - Lead**
- 4. Legendairy Milk Cash Cow - 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 June 29, 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 Legendairy Milk, LLC 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 Legendairy Milk, LLC

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.



Michael Freund

Dated: June 29, 2023

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 29, 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
Legendary Milk, LLC
1007 S Heatherwilde Blvd, Ste 100
Pflugerville, TX 78660

The Corporation Trust Company
(Registered Agent for Legendary Milk, LLC)
Corporation Trust Center
1209 N. Orange St
Wilmington, DE 19801

CT Corporation System
(Registered Agent for Legendary Milk, LLC)
1999 Bryan St, Ste 100
Dallas, TX 75201

On June 29, 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 29, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Lisa A. Smittcamp, District Attorney
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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

June 29, 2023

Page 5

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inyoda@inyocounty.us

Devin Chandler, Program Coordinator
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Walter W. Wall, District Attorney
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Mariposa, CA 95338
mcda@mariposacounty.org

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Merced, CA 95340
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
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SanDiegoDAProp65@sdcda.org

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CityAttyProp65@sandiego.gov

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Alexandra.grayner@sfgov.org

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San Francisco, CA 94102
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

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

June 29, 2023

Page 6

Christopher Dalbey, Deputy District Attorney
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DAProp65@co.santa-barbara.ca.us

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EPU@da.sccgov.org

Nora V. Frimann, City Attorney
San Jose City Attorney
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San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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Jeannie.Barnes@sonoma-county.org

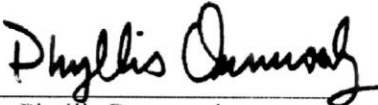
Phillip J. Cline, District Attorney
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Prop65@co.tulare.ca.us

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 29, 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 29, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 95317	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453		
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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