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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.**

**PROMIX NUTRITION, INC. and DOES 1-  
100**

**Defendants.**

**CASE NO. 24CV063338**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 9, 2024

Trial Date: None set

**1. INTRODUCTION**

**1.1** On February 9, 2024, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
3 (“Proposition 65”), against Promix Nutrition, Inc. (“Promix”) and Does 1-100. In this action,  
4 ERC alleges that a number of products manufactured, distributed, or sold by Promix contain  
5 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
6 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
7 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
8 Products”) are: (1) Promix Grass-fed Whey Raw Chocolate, (2) Promix One Ingredient Grass-  
9 Fed Whey Unflavored, (3) Promix Grass-Fed Whey Chocolate Peanut Butter, (4) Promix  
10 Vegan Protein Raw Chocolate, (5) Promix Grass-Fed Collagen Peptides Dutch Chocolate, (6)  
11 Promix Grass-fed Collagen Peptides French Vanilla, (7) Promix Grass-fed Collagen + BCAA  
12 Chocolate, (8) Promix Vegan Protein French Vanilla, (9) Promix Pasture-raised Micellar  
13 Casein Dutch Chocolate, (10) Promix Vegan Cereal Bars Cinnamon French Toast, (11) Promix  
14 Vegan Protein Puff Bar Chocolate, (12) Promix Vegan Cereal Bar Maple Waffle Crunch, (13)  
15 Promix Pasture-raised Micellar Casein French Vanilla, and (14) Promix Recovery + Glutamine  
16 Dutch Chocolate.

17 **1.2** ERC and Promix are hereinafter referred to individually as a “Party” or  
18 collectively as the “Parties.”

19 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
20 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
21 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
22 and encouraging corporate responsibility.

23 **1.4** For purposes of this Consent Judgment, the Parties agree that Promix is a business  
24 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a  
25 “person in the course of doing business” within the meaning of Proposition 65. Promix  
26 manufactures, distributes, and/or sells the Covered Products.

27 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
28 dated August 17, 2023 and August 29, 2023 that were served on the California Attorney

1 General, other public enforcers, and Promix (“Notices”). True and correct copies of the 60-Day  
2 Notices dated August 17, 2023 and August 29, 2023 are attached hereto as **Exhibits A and B**  
3 and each is incorporated herein by reference. More than 60 days have passed since the Notices  
4 were served on the Attorney General, public enforcers, and Promix and no designated  
5 governmental entity has filed a Complaint against Promix with regard to the Covered Products  
6 or the alleged violations.

7 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by  
8 California consumers exposes them to lead without first receiving clear and reasonable  
9 warnings from Promix, which is in violation of California Health and Safety Code section  
10 25249.6. Promix denies all material allegations contained in the Notices and Complaint.

11 **1.7** Promix denies the material factual and legal allegations of the Notices and  
12 Complaint, and maintains that all of the products it has manufactured, imported, sold, and/or  
13 distributed for sale in California, including the Covered Products, have been, and are, in  
14 compliance with all laws.

15 **1.8** The Parties have entered into this Consent Judgment in order to settle,  
16 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
17 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
18 or be construed as an admission by any of the Parties or by any of their respective officers,  
19 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
20 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
21 issue of law, or violation of law.

22 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall  
23 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
24 any current or future legal proceeding unrelated to these proceedings.

25 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered  
26 as a Judgment by this Court.

27 **2. JURISDICTION AND VENUE**

28 For purposes of this Consent Judgment and any further court action that may become

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

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

8 **3.1** Beginning on the Effective Date, Promix shall be permanently enjoined from  
9 manufacturing for sale in the State of California, “Distributing into the State of California,” or  
10 directly selling in the State of California, any Covered Product that exposes a person to a  
11 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the  
12 warning requirements under Section 3.2.

13 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State of  
14 California” shall mean to directly ship a Covered Product into California for sale in California or  
15 to sell a Covered Product to a distributor that Promix knows or has reason to know will sell the  
16 Covered Product in California.

17 **3.1.2** Notwithstanding anything else in this Consent Judgment, Promix shall not  
18 be subject to further liability for Covered Products that “enter the stream of commerce” prior to  
19 the Effective Date. For purposes of this Consent Judgment, the term “enter the stream of  
20 commerce” means that manufactured Covered Products have been put into final packaging for  
21 consumer sale and are no longer in the possession of or under the control of Promix.

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

1           **3.2 Clear and Reasonable Warnings**

2           If Promix is required to provide a warning pursuant to Section 3.1, the following warning  
3 must be utilized (“Warning”):

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

7           Promix shall use the phrase “cancer and” in the Warning if Promix has reason to believe  
8 that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined  
9 pursuant to the quality control methodology set forth in Section 3.4 or if Promix has reason to  
10 believe that another Proposition 65 chemical is present which may require a cancer warning. As  
11 identified in the brackets, the warning shall appropriately reflect whether there is lead or another  
12 chemical that requires a Proposition 65 warning present in each of the Covered Products, but if  
13 there is a chemical present at a level that requires a cancer warning, the chemical requiring use of  
14 the phrase “cancer and” in the Warning shall always be identified.

15           The Warning shall be securely affixed to or printed upon the label of each Covered  
16 Product and it must be set off from other surrounding information and enclosed in a box. In  
17 addition, for any Covered Product sold over the internet, the Warning shall appear on the  
18 checkout page when a California delivery address is indicated for any purchase of any Covered  
19 Product. An asterisk or other identifying method must be utilized to identify which products on  
20 the checkout page are subject to the Warning. In no event shall any internet or website Warning  
21 be contained in or made through a link.

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

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

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

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

### 9 **3.3 Conforming Covered Products**

10 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
11 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure  
12 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
13 3.4, and that is not known by Promix to contain other chemicals that violate Proposition 65’s safe  
14 harbor thresholds.

### 15 **3.4 Testing and Quality Control Methodology**

16 **3.4.1** Beginning within one year of the Effective Date, Promix shall arrange  
17 for lead testing of the Covered Products at least once a year for a minimum of five consecutive  
18 years by arranging for testing of three (3) randomly selected samples of each of the Covered  
19 Products, in the form intended for sale to the end-user, which Promix intends to sell or is  
20 manufacturing for sale in California, directly selling to a consumer in California or  
21 “Distributing into the State of California.” If tests conducted pursuant to this Section  
22 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
23 years, then the testing requirements of this Section will no longer be required as to that  
24 Covered Product. However, if during or after the five-year testing period, Promix changes  
25 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered  
26 Products, Promix shall test that Covered Product annually for at least four (4) consecutive  
27 years after such change is made.

28 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest

1 lead detection result of the three (3) randomly selected samples of the Covered Products will  
2 be controlling.

3           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
4 laboratory method that complies with the performance and quality control factors appropriate  
5 for the method used, including limit of detection and limit of quantification, sensitivity,  
6 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
7 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
8 mg/kg.

9           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
10 independent third party laboratory certified by the California Environmental Laboratory  
11 Accreditation Program or an independent third-party laboratory that is registered with the  
12 United States Food & Drug Administration.

13           **3.4.5** Nothing in this Consent Judgment shall limit Promix’s ability to  
14 conduct, or require that others conduct, additional testing of the Covered Products, including  
15 the raw materials used in their manufacture.

16           **3.4.6** Within thirty (30) days of ERC’s written request, Promix shall deliver  
17 lab reports obtained pursuant to Section 3.4 to ERC. Promix shall retain all test results and  
18 documentation for a period of five years from the date of each test.

19           **3.4.7** The testing requirements under this Section 3.4 do not apply to any  
20 Covered Product for which Promix has provided the Warning specified in Section 3.2  
21 continuously and uninterrupted after the Effective Date; however, in the event Promix ceases  
22 to provide the Warning specified in Section 3.2, Promix shall be required to comply with the  
23 testing requirements of this section beginning immediately after the date the Warning ceases to  
24 be provided or one year after the Effective Date, whichever date is later.

25           **3.4.8** The testing requirements of this Section 3.4 do not apply to any Covered  
26 Product that has been discontinued and is no longer being manufactured as of the Effective  
27 Date. However, if, after discontinuance (whether before or after the Effective Date), the  
28 Covered Product is brought back into production, the testing and reporting requirements of

1 Section 3.4 shall resume and continue for any period of time that remained as of the date of  
2 discontinuance.

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

6 **4. SETTLEMENT PAYMENT**

7 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
8 payments, attorney's fees, and costs, Promix shall make a total payment of \$100,000 ("Total  
9 Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). Promix shall  
10 make this payment by wire transfer to ERC's account, for which ERC will give Promix the  
11 necessary account information. The Total Settlement Amount shall be apportioned as follows:

12 **4.2** \$17,150.00 shall be considered a civil penalty pursuant to California Health and  
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$12,862.50) of the civil penalty to  
14 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$4,287.50) of the civil penalty.

17 **4.3** \$10,437.09 shall be distributed to ERC as reimbursement to ERC for reasonable  
18 costs incurred in bringing this action.

19 **4.4** \$12,798.00 shall be distributed to ERC as an Additional Settlement Payment  
20 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
21 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
22 allegedly caused by Defendant in this matter. These activities are detailed below and support  
23 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in  
24 dietary supplement products in California. ERC's activities have had, and will continue to  
25 have, a direct and primary effect within the State of California because California consumers  
26 will be benefitted by the reduction and/or elimination of exposure to lead in dietary  
27 supplements and/or by providing clear and reasonable warnings to California consumers prior  
28 to ingestion of the products.



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

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

26 **4.5** \$20,385.58 shall be distributed to Aqua Terra Aeris Law Group as  
27 reimbursement of ERC's attorney fees, while \$39,229.33 shall be distributed to ERC for its in-  
28 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and

1 costs.

2           **4.6**     In the event that Promix fails to remit the Total Settlement Amount owed under  
3 Section 4 of this Consent Judgment on or before the Due Date, Promix shall be deemed to be  
4 in material breach of its obligations under this Consent Judgment. ERC shall provide written  
5 notice of the delinquency to Promix via electronic mail. If Promix fails to deliver the Total  
6 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount  
7 shall accrue interest at the statutory judgment interest rate provided in the California Code of  
8 Civil Procedure section 685.010. Additionally, Promix agrees to pay ERC’s reasonable  
9 attorney’s fees and costs for any efforts to collect the payment due under this Consent  
10 Judgment.

11     **5.    MODIFICATION OF CONSENT JUDGMENT**

12           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
13 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
14 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
15 modified consent judgment.

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

28           **5.3**     In the event that Promix initiates or otherwise requests a modification under

1 Section 5.1, and the meet and confer process leads to a joint motion or joint application for a  
2 modification of the Consent Judgment, Promix shall reimburse ERC its costs and reasonable  
3 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the  
4 motion or application.

5 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
6 **JUDGMENT**

7 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
8 terminate this Consent Judgment.

9 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
10 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
11 inform Promix, in writing to the person(s) identified in Section 11 to receive notices for Promix,  
12 in a reasonably prompt manner of its test results, including information sufficient to permit  
13 Promix to identify the Covered Products at issue. Within thirty (30) days after receiving ERC's  
14 written notice, Promix may request the following information from ERC, if not already  
15 provided, in order to assist in its response to the written notice: (a) the date the Covered  
16 Product was purchased; (b) the entity from whom the Covered Product was purchased; (c)  
17 proof of purchase, such as images of receipts; (d) a description of the Covered Product giving  
18 rise to the alleged violation, including the product's lot number; (e) one or more photographs  
19 or images sufficient to identify the product, and (f) all test data obtained by ERC regarding the  
20 Covered Product sufficient to support the test results. Promix shall, within thirty (30) days  
21 following such notice or ERC's response to the request for additional information, whichever  
22 date is later, provide ERC with testing information, from an independent third-party laboratory  
23 meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Promix's compliance with  
24 the Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking  
25 any further legal action.

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
2 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application  
3 to any Covered Product that is distributed or sold exclusively outside the State of California and  
4 that is not used by California consumers.

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

6 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
7 on behalf of itself and in the public interest, and Promix and its respective officers, directors,  
8 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
9 franchisees, licensees, customers (not including private label customers of Promix),  
10 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
11 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
12 of them (collectively, “Released Parties”).

13 **8.2** ERC, acting in the public interest, releases the Released Parties from any  
14 and all claims for violations of Proposition 65 up through the Effective Date based on exposure  
15 to lead from the Covered Products as set forth in the Notices of Violation. ERC, on behalf of  
16 itself only, hereby fully releases and discharges the Released Parties from any and all claims,  
17 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
18 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
19 the Covered Products, as to any alleged violation of Proposition 65 or any other statutory or  
20 common law claims that have been or could have been asserted by ERC, on behalf of itself  
21 only, regarding the failure to warn about exposure to lead arising in connection with the  
22 Covered Products manufactured, distributed and/or sold by Promix up to and including the  
23 Effective Date..

24 **8.3** ERC on its own behalf only, and Promix on its own behalf only, further  
25 waive and release any and all claims they may have against each other for all actions or  
26 statements made or undertaken in the course of seeking or opposing enforcement of  
27 Proposition 65 in connection with the Notices and Complaint up through and including the  
28 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s

1 right to seek to enforce the terms of this Consent Judgment.

2           **8.4**     It is possible that other claims not known to the Parties, arising out of the facts  
3 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
4 discovered. ERC on behalf of itself only, and Promix on behalf of itself only, acknowledge that  
5 this Consent Judgment is expressly intended to cover and include all such claims up through  
6 and including the Effective Date, including all rights of action therefore. ERC and Promix  
7 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown  
8 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
9 claims. California Civil Code section 1542 reads as follows:

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

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

17           **8.5**     Compliance with the terms of this Consent Judgment shall be deemed to  
18 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
19 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

20           **8.6**     Nothing in this Consent Judgment is intended to apply to any occupational or  
21 environmental exposures arising under Proposition 65, nor shall it apply to any of Promix's  
22 products other than the Covered Products.

23           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

27           **10. GOVERNING LAW**

28           The terms and conditions of this Consent Judgment shall be governed by and construed in

1 accordance with the laws of the State of California.

2 **11. PROVISION OF NOTICE**

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

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

7 Chris Heptinstall, Executive Director, Environmental Research Center  
8 3111 Camino Del Rio North, Suite 400  
9 San Diego, CA 92108  
10 Ph: (619) 500-3090  
11 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

11 With a copy to:

12 Matthew C. Maclear  
13 Anthony M. Barnes  
14 Aqua Terra Aeris Law Group  
15 4030 Martin Luther King Jr. Way  
16 Oakland, CA 94609  
17 Ph: (415) 568-5200  
18 Email: [mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
19 [amb@atalawgroup.com](mailto:amb@atalawgroup.com)

17 **FOR PROMIX NUTRITION, INC.:**

18 Albert Matheny  
19 2613 NW 24<sup>th</sup> Terrace  
20 Gainesville, FL 32605

20 With a copy to:

21 Jasmine Wetherell  
22 Perkins Coie LLP  
23 1888 Century Park East, Suite 1700  
24 Los Angeles, CA 90067  
25 Ph: (310) 788-3294  
26 Email: [jwetherell@perkinscoie.com](mailto:jwetherell@perkinscoie.com)

25 **12. COURT APPROVAL**

26 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
27 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
28 Consent Judgment.

1           **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
3 prior to the hearing on the motion.

4           **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
5 void and have no force or effect.

6           **13. EXECUTION AND COUNTERPARTS**

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

10           **14. DRAFTING**

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

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

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

25           **16. ENFORCEMENT**

26           ERC may, by motion or order to show cause before the Superior Court of Alameda County,  
27 enforce the terms and conditions contained in this Consent Judgment. In any action brought by  
28 ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or

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

6 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
14 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

23 (2) Make the findings pursuant to California Health and Safety Code section  
24 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

27 ///

28 ///

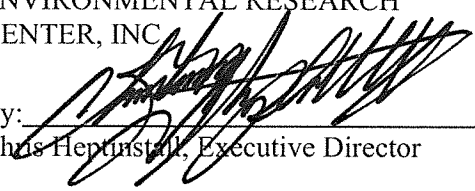


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**IT IS SO STIPULATED:**

Dated: 5/29/, 2024

ENVIRONMENTAL RESEARCH  
CENTER, INC

By:   
Chris Heptinstall, Executive Director

Dated: \_\_\_\_\_, 2024

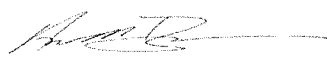
PROMIX NUTRITION, INC.

\_\_\_\_\_  
By:  
Its:

**APPROVED AS TO FORM:**

Dated: May 22, 2024

AQUA TERRA AERIS LAW GROUP

By:   
Matthew C. Maclear  
Anthony M. Barnes

Dated: \_\_\_\_\_, 2024

PERKINS COIE LLP

By: \_\_\_\_\_  
Jasmine Wetherell  
Attorney for Promix Nutrition, Inc.

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**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_, 2024

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

Dated: May 22, 2024

PROMIX NUTRITION, INC.

DocuSigned by:  
*Albert Matheny*  
0CAF2DA9142642D...  
By: Albert Matheny  
Its: CEO

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2024

AQUA TERRA AERIS LAW GROUP

By: \_\_\_\_\_  
Matthew C. Maclear  
Anthony M. Barnes

Dated: May 22, 2024

PERKINS COIE LLP

By: *J. Wetherell*  
Jasmine Wetherell  
Attorney for Promix Nutrition, Inc.

**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**



Matthew Maclear  
[mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
415-568-5200

Anthony Barnes  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)  
917-371-8293

August 17, 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:

**Promix Nutrition, Inc.**



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 17, 2023  
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**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. **Promix Grass-fed Whey Raw Chocolate - Lead**
2. **Promix One Ingredient Grass-Fed Whey Unflavored - Lead**
3. **Promix Grass-Fed Whey Chocolate Peanut Butter - Lead**
4. **Promix Vegan Protein Raw Chocolate - Lead**
5. **Promix Grass-Fed Collagen Peptides Dutch Chocolate - Lead**
6. **Promix Grass-fed Collagen Peptides French Vanilla - Lead**
7. **Promix Grass-fed Collagen + BCAA Chocolate - Lead**
8. **Promix Vegan Protein French Vanilla - 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 August 17, 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 17, 2023  
Page 3

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

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Maclear", is written over a horizontal line.

Matthew Maclear  
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Promix Nutrition, Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 17, 2023  
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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Promix Nutrition, Inc.**

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

A handwritten signature in black ink that reads "Matthew Maclear".

Dated: August 17, 2023

\_\_\_\_\_  
Matthew Maclear





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

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

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

On August 17, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Promix Nutrition, Inc.  
2613 NW 24<sup>th</sup> Terrace  
Gainesville, FL 32605

Cogency Global Inc.  
(Registered Agent for Promix Nutrition, Inc.)  
115 North Calhoun St, Ste 4  
Tallahassee, FL 32301

Cogency Global Inc.  
(Registered Agent for Promix Nutrition, Inc.)  
850 New Burton Road, Ste 201  
Dover, DE 19904

Current President or CEO  
Promix Nutrition, Inc.  
1401 N. Main St  
Gainesville, FL 32604

On August 17, 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 August 17, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 17, 2023  
Page 6

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

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@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  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

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

August 17, 2023

Page 7

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org  
Starla.Sousa@sfcityatty.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

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

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

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

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

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

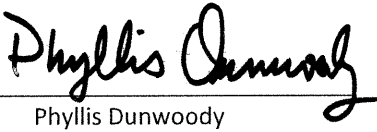
Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 17, 2023  
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On August 17, 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 August 17, 2023, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 17, 2023  
Page 9

### Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	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, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	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, Colusa County 310 6 <sup>th</sup> St Colusa, CA 95932	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	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, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991	
District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637		

## APPENDIX A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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

# **EXHIBIT B**



Matthew Maclear  
[mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
415-568-5200

Anthony Barnes  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)  
917-371-8293

August 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:

**Promix Nutrition, Inc.**



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August 29, 2023  
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**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. **Promix Pasture-raised Micellar Casein Dutch Chocolate - Lead**
2. **Promix Vegan Cereal Bars Cinnamon French Toast - Lead**
3. **Promix Vegan Protein Puff Bar Chocolate - Lead**
4. **Promix Vegan Cereal Bar Maple Waffle Crunch - Lead**
5. **Promix Pasture-raised Micellar Casein French Vanilla - Lead**
6. **Promix Recovery + Glutamine Dutch Chocolate - 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 August 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.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
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ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

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

---

Matthew Maclear  
**AQUA TERRA AERIS LAW GROUP**

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Promix Nutrition, Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



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

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Promix Nutrition, Inc.**

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

A handwritten signature in black ink that reads "Matthew Maclear".

Dated: August 29, 2023

\_\_\_\_\_  
Matthew Maclear



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

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

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

On August 29, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Promix Nutrition, Inc.  
2613 NW 24<sup>th</sup> Terrace  
Gainesville, FL 32605

Cogency Global Inc.  
(Registered Agent for Promix Nutrition, Inc.)  
115 North Calhoun St, Ste 4  
Tallahassee, FL 32301

Cogency Global Inc.  
(Registered Agent for Promix Nutrition, Inc.)  
850 New Burton Road, Ste 201  
Dover, DE 19904

Current President or CEO  
Promix Nutrition, Inc.  
1401 N. Main St  
Gainesville, FL 32604

On August 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 August 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

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





Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
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Page 6

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

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@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  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.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.*  
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Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org  
Starla.Sousa@sfcityatty.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

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

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

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

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

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
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On August 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 August 29, 2023, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a large, looping initial "P".

---

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 29, 2023  
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### Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	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, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	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, Colusa County 310 6 <sup>th</sup> St Colusa, CA 95932	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	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, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991	
District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637		

## APPENDIX A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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



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

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

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

Revised: May 2017

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