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14 Attorney for Defendants
15 Garden Of Original Greens LLC, individually and dba
16 Barton Nutrition; Barton Publishing Inc., individually
17 and dba Barton Nutrition

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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.

**GARDEN OF ORIGINAL GREENS LLC,
individually and dba BARTON
NUTRITION; BARTON PUBLISHING
INC., individually and dba BARTON
NUTRITION; and DOES 1-100**

Defendants.

CASE NO. 24CV061644

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 29, 2024

Trial Date: None set

1. INTRODUCTION

1.1 On January 29, 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 Garden of Original Greens LLC, individually and dba Barton
4 Nutrition, and Barton Publishing Inc., individually and dba Barton Nutrition (collectively
5 "Barton Nutrition") and Does 1-100. In this action, ERC alleges that a number of products
6 manufactured, distributed, or sold by Barton Nutrition contain lead, a chemical listed under
7 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical
8 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
9 individually as a "Covered Product" or collectively as "Covered Products") are: (1) Barton
10 Nutrition FiberGreens Iced Tea Lemonade Naturally Flavored, and (2) Barton Nutrition
11 FiberGreens Green Apple Naturally Flavored.

12 1.2 ERC and Barton Nutrition are hereinafter referred to individually as a "Party" or
13 collectively as the "Parties."

14 1.3 ERC maintains it is a 501 (c)(3) California non-profit corporation dedicated to,
15 among other causes, helping safeguard the public from health hazards by reducing the use and
16 misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
17 employees, and encouraging corporate responsibility.

18 1.4 For purposes of this Consent Judgment, the Parties agree that Barton Nutrition is a
19 business entity that has employed ten or more persons at all times relevant to this action, and
20 qualifies as a "person in the course of doing business" within the meaning of Proposition 65.
21 Barton Nutrition manufactures, distributes, and/or sells the Covered Products.

22 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
23 dated October 18, 2023 that was served on the California Attorney General, other public
24 enforcers, and Barton Nutrition ("Notice"). A true and correct copy of the 60-Day Notice dated
25 October 18, 2023 is attached hereto as Exhibit A and is incorporated herein by reference.
26 More than 60 days have passed since the Notice was served on the Attorney General, public
27 enforcers, and Barton Nutrition and no designated governmental entity has filed a Complaint
28 against Barton Nutrition with regard to the Covered Products or the alleged violations.

1 1.6 ERC's Notice and Complaint allege that use of the Covered Products by
2 California consumers exposes them to lead without first receiving clear and reasonable
3 warnings from Barton Nutrition, which is in violation of California Health and Safety Code
4 section 25249.6. Barton Nutrition denies all material allegations contained in the Notice and
5 Complaint.

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

13 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
15 any current or future legal proceeding unrelated to these proceedings.

16 1.9 The Effective Date of this Consent Judgment is the date on which it is entered
17 as a Judgment by this Court.

18 2. **JURISDICTION AND VENUE**

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

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

27 3.1 Beginning on the Effective Date, Barton Nutrition shall be permanently
28 enjoined from manufacturing for sale in the State of California, "Distributing into the State of

1 California," or directly selling in the State of California, any Covered Product that exposes a
2 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
3 meets the warning requirements under Section 3.2.

4 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
5 of California" shall mean to directly ship a Covered Product into California for sale in
6 California or to sell a Covered Product to a distributor that Barton Nutrition knows or has
7 reason to know will sell the Covered Product in California.

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

15 3.2 Clear and Reasonable Warnings

16 If Barton Nutrition is required to provide a warning pursuant to Section 3.1, one of the
17 following warnings must be utilized ("Warning"):

18 OPTION 1:

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

22 or

23 OPTION 2:

24 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov/food

25 Barton Nutrition shall use the phrase "cancer and" in the Warning if Barton Nutrition has
26 reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as
27 determined pursuant to the quality control methodology set forth in Section 3.4 or if Barton
28

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

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

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

24 Barton Nutrition must display the above Warning with such conspicuousness, as
25 compared with other words, statements or designs on the label, or on its website, if applicable, to
26 render the Warning likely to be read and understood by an ordinary individual under customary
27 conditions of purchase or use of the product. Where a sign or label used to provide the Warning
28 for a Covered Product includes consumer information about the Covered Product in a language

1 other than English, the Warning must also be provided in that language in addition to English.

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

5 3.3 Conforming Covered Products

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

11 3.4 Testing and Quality Control Methodology

12 3.4.1 Beginning within one year of the Effective Date, Barton Nutrition shall
13 arrange for lead testing of the Covered Products at least once a year for a minimum of five
14 consecutive years by arranging for testing of three (3) randomly selected samples of each of
15 the Covered Products, in the form intended for sale to the end-user, which Barton Nutrition
16 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
17 California or "Distributing into the State of California." If tests conducted pursuant to this
18 Section demonstrate that no Warning is required for a Covered Product during each of five
19 consecutive years, then the testing requirements of this Section will no longer be required as to
20 that Covered Product. However, if during or after the five-year testing period, Barton Nutrition
21 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
22 Covered Products, Barton Nutrition shall test that Covered Product annually for at least four
23 (4) consecutive years after such change is made.

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

27 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
28 laboratory method that complies with the performance and quality control factors appropriate

1 for the method used, including limit of detection and limit of quantification, sensitivity,
2 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
3 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005
4 mg/kg.

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

9 3.4.5 Nothing in this Consent Judgment shall limit Barton Nutrition's ability
10 to conduct, or require that others conduct, additional testing of the Covered Products, including
11 the raw materials used in their manufacture.

12 3.4.6 Within thirty (30) days of ERC's written request, Barton Nutrition shall
13 deliver lab reports obtained pursuant to Section 3.4 to ERC. Barton Nutrition shall retain all
14 test results and documentation for a period of five years from the date of each test.

15 3.5 Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
16 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
17 testing meets the requirements of Sections 3.4.3 and 3.4.4.

18 4. SETTLEMENT PAYMENT

19 4.1 In full satisfaction of all potential civil penalties, additional settlement
20 payments, attorney's fees, and costs, Barton Nutrition shall make a total payment of
21 \$50,000.00 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due
22 Date"). Barton Nutrition shall make this payment by wire transfer to ERC's account, for which
23 ERC will give Barton Nutrition the necessary account information. The Total Settlement
24 Amount shall be apportioned as follows:

25 4.2 \$7,500.00 shall be considered a civil penalty pursuant to California Health and
26 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$5,625.00) of the civil penalty to the
27 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
28 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety

1 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,875.00) of the civil penalty.

2 4.3 \$3,754.92 shall be distributed to ERC as reimbursement to ERC for reasonable
3 costs incurred in bringing this action.

4 4.4 \$13,255.00 shall be distributed to Michael Freund & Associates as
5 reimbursement of ERC's attorney fees, while \$25,490.08 shall be distributed to ERC for its in-
6 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
7 costs.

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

17 **5. MODIFICATION OF CONSENT JUDGMENT**

18 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
19 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
20 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
21 modified consent judgment.

22 5.2 If Barton Nutrition seeks to modify this Consent Judgment under Section 5.1,
23 then Barton Nutrition must provide written notice to ERC of its intent ("Notice of Intent"). If
24 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
25 ERC must provide written notice to Barton Nutrition within thirty (30) days of receiving the
26 Notice of Intent. If ERC notifies Barton Nutrition in a timely manner of ERC's intent to meet
27 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
28 Parties shall meet in person, via remote meeting, or by telephone within thirty (30) days of

1 ERC's notification of its intent to meet and confer. Within thirty (30) days of such meeting, if
2 ERC disputes the proposed modification, ERC shall provide to Barton Nutrition a written basis
3 for its position. The Parties shall continue to meet and confer for an additional thirty (30) days
4 in an effort to resolve any remaining disputes. Should it become necessary, the Parties may
5 agree in writing to different deadlines for the meet-and-confer period.

6 5.3 In the event that Barton Nutrition initiates or otherwise requests a modification
7 under Section 5.1, and the meet and confer process leads to a joint motion or joint application
8 for a modification of the Consent Judgment, Barton Nutrition shall reimburse ERC its costs and
9 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
10 arguing the motion or application.

11 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
12 **JUDGMENT**

13 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or
14 terminate this Consent Judgment.

15 6.2 If ERC alleges that any Covered Product fails to qualify as a Conforming
16 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
17 inform Barton Nutrition in a reasonably prompt manner of its test results, including information
18 sufficient to permit Barton Nutrition to identify the Covered Products at issue. Barton Nutrition
19 shall, within thirty (30) days following such notice, provide ERC with testing information,
20 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and
21 3.4.4, demonstrating Barton Nutrition's compliance with the Consent Judgment. The Parties
22 shall first attempt to resolve the matter prior to ERC taking any further legal action.

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
26 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
27 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
28 application to any Covered Product that is distributed or sold exclusively outside the State of

1 California and that is not used by California consumers.

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

3 8.1 This Consent Judgment is a full, final, and binding resolution between ERC,
4 on behalf of itself and in the public interest, and Barton Nutrition and its respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
6 franchisees, licensees, customers (not including private label customers of Barton Nutrition),
7 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
8 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
9 of them (collectively, "Released Parties").

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

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

25 8.4 It is possible that other claims not known to the Parties, arising out of the facts
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
27 discovered. ERC on behalf of itself only, and Barton Nutrition on behalf of itself only,
28 acknowledge that this Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.
2 ERC and Barton Nutrition acknowledge that the claims released in Sections 8.2 and 8.3 above
3 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
4 any such unknown claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, and Barton Nutrition on behalf of itself only, acknowledge and
12 understand the significance and consequences of this specific waiver of California Civil Code
13 section 1542.

14 8.5 Compliance with the terms of this Consent Judgment shall be deemed to
15 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
16 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

17 8.6 Nothing in this Consent Judgment is intended to apply to any occupational or
18 environmental exposures arising under Proposition 65, nor shall it apply to any of Barton
19 Nutrition's products other than the Covered Products.

18 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

22 10. GOVERNING LAW

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

25 11. PROVISION OF NOTICE

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

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

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

7 With a copy to:

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

14 **FOR GARDEN OF ORIGINAL GREENS LLC, individually and dba BARTON**
15 **NUTRITION; BARTON PUBLISHING INC., individually and dba BARTON**
16 **NUTRITION:**

17 Jeremy Beavis, Chief Operations Officer
18 48283 264th Street,
19 Brandon, SD 57005
20 Email: Jeremy@bartonpublishing.com

21 With a copy to:

22 Brian M. Ledger
23 Gordon Rees Scully Mansukhani LLP
24 101 W Broadway, Suite 1600
25 San Diego, CA 92101
26 Telephone: (619) 696-6700
27 Email: bledger@grsm.com

28 **12. COURT APPROVAL**

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

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

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

1 **13. EXECUTION AND COUNTERPARTS**

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

5 **14. DRAFTING**

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

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

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

20 **16. ENFORCEMENT**

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

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

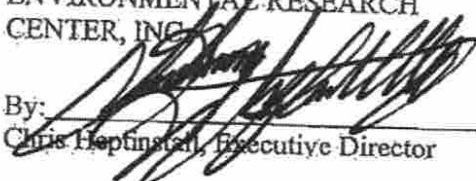
18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

22 **IT IS SO STIPULATED:**

23 Dated: 7/15/, 2024

24 ENVIRONMENTAL RESEARCH
25 CENTER, INC.

26 By: 
27 Chris Heptinstal, Executive Director

1 Dated: July 15, 2024

GARDEN OF ORIGINAL GREENS LLC,
individually and dba BARTON
NUTRITION

By:
Its:

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8 Dated: July 15, 2024

BARTON PUBLISHING INC.,
individually and dba BARTON
NUTRITION

By:
Its:

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12
13 **APPROVED AS TO FORM:**

14
15 Dated: 7/15/2024

MICHAEL FREUND & ASSOCIATES

16
17
18 By:

Michael Freund
Attorney for Environmental Research
Center, Inc.

19
20 Dated: July 15, 2024

GORDON REES SCULLY
MANSUKHANI LLP

21
22
23 By:

Brian M. Ledger
Attorney for Garden of Original Greens
LLC, individually and dba Barton
Nutrition, and Barton Publishing Inc.,
individually and dba Barton Nutrition

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2024

Judge of the Superior Court

EXHIBIT A

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Michael Freund & Associates

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

Michael Freund, Esq.

October 18, 2023

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

Dear Alleged Violators 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Garden of Original Greens LLC, individually and dba Barton Nutrition
Barton Publishing Inc., individually and dba Barton Nutrition**

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. Barton Nutrition FiberGreens Iced Tea Lemonade Naturally Flavored - Lead**
- 2. Barton Nutrition FiberGreens Green Apple Naturally Flavored - 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 October 18, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they 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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

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

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Garden of Original Greens LLC, individually and dba Barton Nutrition and Barton Publishing Inc., individually and dba Barton Nutrition and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Garden of Original Greens LLC, individually and dba Barton Nutrition and Barton Publishing Inc., individually and dba Barton Nutrition

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

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



Dated: October 18, 2023

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On October 18, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Garden of Original Greens LLC, individually
and dba Barton Nutrition and Barton Publishing Inc.,
individually and dba Barton Nutrition
48283 264th Street
Brandon, SD 57005

Current President or CEO
Garden of Original Greens LLC, individually
and dba Barton Nutrition and Barton Publishing Inc.,
individually and dba Barton Nutrition
4820 Capital Ave NE
Aberdeen, SD 57401

Current President or CEO
Garden of Original Greens LLC, individually
and dba Barton Nutrition and Barton Publishing Inc.,
individually and dba Barton Nutrition
PO Box 50
Brandon, SD 57005

Joseph C. Barton
(Registered Agent for Barton Publishing Inc.,
individually and dba Barton Nutrition)
48283 264th Street
Brandon, SD 57005

Heath R. Oberloh
(Registered Agent for Garden of Original Greens
LLC, individually and dba Barton Nutrition)
300 S Phillips Ave, Ste 300
Sioux Falls, SD 57104

On October 18, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 18, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

October 18, 2023

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SanDiegoDAProp65@sdacda.org

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

October 18, 2023

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

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

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

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

Phyllis Dunwoody

Service List

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

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

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

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

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

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

District Attorney, Trinity
County
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Weaverville, CA 96093

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

District Attorney, Mono
County
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Bridgeport, CA 93517

District Attorney, Tuolumne
County
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Sonora, CA 95370

District Attorney, Del Norte
County
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Crescent City, CA 95531

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

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

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

District Attorney, San
Bernardino County
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San Bernadino, CA 92415

Los Angeles City Attorney's
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City Hall East
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Los Angeles, CA 90012

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Redwood City, CA 94063

District Attorney, Humboldt
County
825 5th Street 4th 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
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Floor
Downieville, CA 95936

District Attorney, Kern County
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Bakersfield, CA 93301

District Attorney, Siskiyou
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Yreka, CA 96097

District Attorney, Kings
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Hanford, CA 93230

District Attorney, Solano
County
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Fairfield, CA 94533

District Attorney, Lake County
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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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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