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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF ALAMEDA**

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

22 **Plaintiff,**

23 **vs.**

24 **BODYHEALTH.COM, LLC and DOES 1-**
25 **100**

26 **Defendants.**

27 **CASE NO. 24CV068926**

28 **[PROPOSED] STIPULATED**
CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 25, 2024

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On March 25, 2024, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
5 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
6 (“Proposition 65”), against BodyHealth.com, LLC (“BodyHealth”) and Does 1-100. In this

1 action, ERC alleges that a number of products manufactured, distributed, or sold by
2 BodyHealth contain lead and/or cadmium and/or mercury, chemicals listed under Proposition
3 65 as carcinogens and/or reproductive toxins, and expose consumers to these chemicals at a
4 level requiring a Proposition 65 warning. These products (referred to hereinafter individually
5 as a “Covered Product” or collectively as “Covered Products”) are: (1) BodyHealth Perfect
6 Amino Blondie Bar (lead), (2) BodyHealth Perfect Amino Brownie Bar (lead), (3) BodyHealth
7 Perfect Amino Power Meal Chocolate (lead, cadmium), (4) BodyHealth Perfect Amino Power
8 Meal Vanilla (lead), (5) BodyHealth Get Lean with Organic Coffeeberry Extract (lead,
9 mercury), (6) BodyHealth Greens Enhanced with Perfect Amino (lead), (7) BodyHealth Reds
10 Enhanced with Perfect Amino (lead), and (8) BodyHealth Eliminate (lead).

11 The product “BodyHealth Get Lean with Organic Coffeeberry Extract” is also referred
12 to individually as “Mercury Covered Product.” The product “BodyHealth Perfect Amino
13 Power Meal Chocolate” is also referred to individually as “Cadmium Covered Product.”

14 **1.2** ERC and BodyHealth are hereinafter referred to individually as a “Party” or
15 collectively as the “Parties.”

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

20 **1.4** For purposes of this Stipulated Consent Judgment (“Consent Judgment”), the
21 Parties agree that BodyHealth is a business entity that has employed ten or more persons at all
22 times relevant to this action and qualifies as a “person in the course of doing business” within the
23 meaning of Proposition 65. BodyHealth manufactures, distributes, and/or sells the Covered
24 Products.

25 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
26 dated January 5, 2024 and January 12, 2024 that were served on the California Attorney
27 General, other public enforcers, and BodyHealth (“Notices”). True and correct copies of the
28 60-Day Notices dated January 5, 2024 and January 12, 2024 are attached hereto as **Exhibits A**

1 and **B** and each is incorporated herein by reference. More than 60 days have passed since the
2 Notices were served on the Attorney General, public enforcers, and BodyHealth and no
3 designated governmental entity has filed a Complaint against BodyHealth with regard to the
4 Covered Products or the alleged violations.

5 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
6 California consumers exposes them to lead and/or cadmium and/or mercury without first
7 receiving clear and reasonable warnings from BodyHealth, which is in violation of California
8 Health and Safety Code section 25249.6. BodyHealth denies all material allegations contained
9 in the Notices and Complaint.

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

17 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
19 any current or future legal proceeding unrelated to these proceedings.

20 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
21 as a Judgment by this Court.

22 **1.10** The "Compliance Date" shall mean the date that is sixty (60) days after the
23 Effective Date.

24 **2. JURISDICTION AND VENUE**

25 For purposes of this Consent Judgment and any further court action that may become
26 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
27 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
28 over BodyHealth as to the acts alleged in the Complaint, that venue is proper in Alameda County,

1 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
2 all claims up through and including the Compliance Date that were or could have been asserted in
3 this action based on the facts alleged in the Notices and Complaint.

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

5 **3.1** Beginning on the Compliance Date, BodyHealth shall be permanently enjoined
6 from manufacturing for sale in the State of California, “Distributing into the State of
7 California,” or directly selling in the State of California, any Covered Product that exposes a
8 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
9 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day and/or,
10 with respect to the Mercury Covered Product, a “Daily Mercury Exposure Level” of more than
11 0.3 micrograms of mercury per day unless it meets the warning requirements under Section
12 3.2.

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

17 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
18 Level” shall be measured in micrograms, and shall be calculated using the following formula:
19 micrograms of lead per gram of product, multiplied by grams of product per serving of the
20 product (using the largest serving size appearing on the product label), multiplied by servings
21 of the product per day (using the largest number of recommended daily servings appearing on
22 the label), which equals micrograms of lead exposure per day. If the label contains no
23 recommended daily servings, then the number of recommended daily servings shall be one.

24 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
25 Level” shall be measured in micrograms, and shall be calculated using the following formula:
26 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
27 the product (using the largest serving size appearing on the product label), multiplied by
28 servings of the product per day (using the largest number of recommended daily servings

1 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
2 contains no recommended daily servings, then the number of recommended daily servings
3 shall be one.

4 **3.1.4** For purposes of this Consent Judgment, the “Daily Mercury Exposure
5 Level” shall be measured in micrograms, and shall be calculated using the following formula:
6 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
7 product (using the largest serving size appearing on the product label), multiplied by servings
8 of the product per day (using the largest number of recommended daily servings appearing on
9 the label), which equals micrograms of mercury exposure per day. If the label contains no
10 recommended daily servings, then the number of recommended daily servings shall be one.

11 **3.2 Clear and Reasonable Warnings**

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

14 **Option 1:**

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

18 **OR**

19 **Option 2:**

20 [WARNING] [CA WARNING] [CALIFORNIA WARNING]: Risk of [cancer from
21 exposure to lead and] reproductive harm from exposure to [lead] [and] [cadmium] [and]
22 [mercury]. See www.P65Warnings.ca.gov/food.

23 **OR**

24 **Option 3:**

25 [WARNING] [CA WARNING] [CALIFORNIA WARNING]: Can expose you to
26 [lead a carcinogen and] [lead] [and] [cadmium] [and] [mercury] a reproductive toxicant.
27 See www.P65Warnings.ca.gov/food.

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1 For all options, the Warning shall begin either with the word “**WARNING**” or the words
2 “**CA WARNING**” or “**CALIFORNIA WARNING**” in all capital letters and bold print.
3 BodyHealth shall use the phrase “cancer and” in the Option 1 Warning or “cancer from exposure
4 to lead and” in the Option 2 Warning or “lead a carcinogen and” in the Option 3 Warning (each
5 referred to individually as a “Cancer Phrase”) if BodyHealth has reason to believe that the “Daily
6 Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
7 control methodology set forth in Section 3.4 or if BodyHealth has reason to believe that another
8 Proposition 65 chemical is present which may require a cancer warning. As identified in the
9 brackets, the warning shall appropriately reflect whether there is lead, cadmium (for the Cadmium
10 Covered Product), mercury (for the Mercury Covered Product), or multiple chemicals present in
11 each of the Covered Products, but if there is a chemical present at a level that requires a cancer
12 warning, the chemical requiring use of the Cancer Phrase in the Warning shall always be identified.

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

20 In no case shall the Warning appear in a type size smaller than 6-point type. No
21 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
22 average lay person shall accompany the Warning. Further no statements may accompany the
23 Warning that state or imply that the source of the listed chemical has an impact on or results in a
24 less harmful effect of the listed chemical.

25 BodyHealth must display the Warning with such conspicuousness, as compared with other
26 words, statements or designs on the label, or on its website, if applicable, to render the Warning
27 likely to be read and understood by an ordinary individual under customary conditions of
28 purchase or use of the product. Where labeling or a sign or label is used to provide the Warning

1 for a Covered Product that includes consumer information about the Covered Product in a
2 language other than English, the Warning must also be provided in that language in addition to
3 English.

4 For purposes of this Consent Judgment, the term “label” means a display of written,
5 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
6 container or wrapper, the term “labeling” means any written, printed, graphic, or electronically
7 provided communication that accompanies a product, such as a package insert, and the term
8 “sign” means a physical presentation of written, printed, graphic, or electronically provided
9 communication, including shelf signs, other than a label or labeling, posted in a conspicuous
10 manner that is associated with the exposure for which the Warning is being provided pursuant to
11 Proposition 65 and is clearly visible under all lighting conditions normally encountered during
12 business hours and under such conditions as to make it likely to be seen, read, and understood by
13 an ordinary person.

14 **3.3 Conforming Covered Products**

15 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
16 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Cadmium Exposure
17 Level” is no greater than 4.1 micrograms of cadmium per day and, with respect to the Mercury
18 Covered Product, the “Daily Mercury Exposure Level” is no greater than 0.3 micrograms of
19 mercury per day as determined by the exposure methodology set forth in Section 3.1.2 and the
20 quality control methodology described in Section 3.4, and that is not known by BodyHealth to
21 contain other chemicals that violate Proposition 65’s safe harbor thresholds.

22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** Beginning within one year of the Effective Date, BodyHealth shall
24 arrange for lead and cadmium and mercury testing of the Covered Products at least once a year
25 for a minimum of three (3) consecutive years by arranging for testing of three (3) randomly
26 selected samples of each of the Covered Products, in the form intended for sale to the end-user,
27 which BodyHealth intends to sell or is manufacturing for sale in California, directly selling to a
28 consumer in California or “Distributing into the State of California.” If tests conducted

1 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
2 each of three consecutive years, then the testing requirements of this Section will no longer be
3 required as to that Covered Product. However, if during or after the three-year testing period,
4 BodyHealth changes ingredient suppliers for any of the Covered Products and/or reformulates
5 any of the Covered Products, BodyHealth shall test that Covered Product annually for at least
6 two (2) consecutive years after such change is made.

7 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
8 “Daily Cadmium Exposure Level” and/or the “Daily Mercury Exposure Level,” the highest
9 lead and/or cadmium and/or mercury detection result of the three (3) randomly selected
10 samples of the Covered Products will be controlling.

11 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
12 laboratory method that complies with the performance and quality control factors appropriate
13 for the method used, including limit of detection and limit of quantification, sensitivity,
14 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
15 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
16 mg/kg.

17 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
18 independent third party laboratory certified by the California Environmental Laboratory
19 Accreditation Program or an independent third-party laboratory that is registered with the
20 United States Food & Drug Administration.

21 **3.4.5** Nothing in this Consent Judgment shall limit BodyHealth’s ability to
22 conduct, or require that others conduct, additional testing of the Covered Products, including
23 the raw materials used in their manufacture.

24 **3.4.6** Within thirty (30) days of ERC’s written request, BodyHealth shall
25 deliver lab reports obtained pursuant to Section 3.4 to ERC. BodyHealth shall retain all test
26 results and documentation for a period of three (3) years from the date of each test.

27 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
28 from obtaining and relying upon its own testing for purposes of enforcement, so long as such

1 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this
2 Consent Judgment is intended by either Party to set a precedent for the level of lead or other
3 chemicals that is permissible in consumer products under Proposition 65.

4 **4. SETTLEMENT PAYMENT**

5 **4.1** In full satisfaction of all potential civil penalties, additional settlement
6 payments, attorney’s fees, and costs, BodyHealth shall make a total payment of \$84,468.95
7 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”).
8 BodyHealth shall make this payment by wire transfer to ERC’s account, for which ERC will
9 give BodyHealth the necessary account information. The Total Settlement Amount shall be
10 apportioned as follows:

11 **4.2** \$12,000.00 shall be considered a civil penalty pursuant to California Health and
12 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$9,000.00) of the civil penalty to the
13 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
14 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
15 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,000.00) of the civil penalty.

16 **4.3** \$8,207.23 shall be distributed to ERC as reimbursement to ERC for reasonable
17 costs incurred in bringing this action.

18 **4.4** \$5,033.65 shall be distributed to ERC as an Additional Settlement Payment
19 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to
20 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities
21 that address the same public harm as allegedly caused by Defendant in this matter. These
22 activities are detailed below and support ERC’s overarching goal of reducing and/or
23 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s
24 activities have had, and will continue to have, a direct and primary effect within the State of
25 California because California consumers will be benefitted by the reduction and/or elimination
26 of exposure to lead and/or cadmium and/or mercury in dietary supplements and/or by
27 providing clear and reasonable warnings to California consumers prior to ingestion of the
28 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/or cadmium and/or mercury and are
6 sold to California consumers. This work includes continued monitoring and enforcement of
7 past consent judgments and settlements to ensure companies are in compliance with their
8 obligations thereunder, with a specific focus on those judgments and settlements concerning
9 lead and/or cadmium and/or mercury. This work also includes investigation of new companies
10 that ERC does not obtain any recovery through settlement or judgment; (2) VOLUNTARY
11 COMPLIANCE PROGRAM (up to 10-20%): maintaining ERC's Voluntary Compliance
12 Program by acquiring products from companies, developing and maintaining a case file, testing
13 products from these companies, providing the test results and supporting documentation to the
14 companies, and offering guidance in warning or implementing a self-testing program for lead
15 and/or cadmium and/or mercury in dietary supplement products; and (3) "GOT LEAD"
16 PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers
17 of contaminated products that reach California consumers by providing access to free testing
18 for lead in dietary supplement products (Products submitted to the program are screened for
19 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
20 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
21 that submitted the product).

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

27 **4.5** \$54,759.12 shall be distributed to ERC for its in-house legal fees. \$4,468.95
28 shall be distributed to ERC for payment of sanctions Ordered by the Court. Except as

1 explicitly provided herein, each Party shall bear its own fees and costs.

2 **4.6** In the event that BodyHealth fails to remit the Total Settlement Amount owed
3 under Section 4 of this Consent Judgment on or before the Due Date, BodyHealth shall be
4 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
5 provide written notice of the delinquency to BodyHealth via electronic mail. If BodyHealth
6 fails to deliver the Total Settlement Amount within five (5) days from the written notice, the
7 Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided
8 in the California Code of Civil Procedure section 685.010. Additionally, BodyHealth agrees to
9 pay ERC’s reasonable attorney’s fees and costs for any efforts to collect the payment due
10 under this Consent 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 BodyHealth seeks to modify this Consent Judgment under Section 5.1, then
17 BodyHealth must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks
18 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
19 provide written notice to BodyHealth within thirty (30) days of receiving the Notice of Intent.
20 If ERC notifies BodyHealth in a timely manner of ERC’s intent to meet and confer, then the
21 Parties 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 BodyHealth 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 BodyHealth 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, BodyHealth shall reimburse ERC its costs and
3 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
4 arguing the 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 BodyHealth in a reasonably prompt manner of its test results, including information
12 sufficient to permit BodyHealth to identify the Covered Products at issue. BodyHealth shall,
13 within thirty (30) days following such notice, provide ERC with testing information, from an
14 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
15 demonstrating BodyHealth's compliance with the Consent Judgment. The Parties shall first
16 attempt to resolve the matter prior to ERC taking any further legal action.

17 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

25 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
26 behalf of itself and in the public interest, and BodyHealth and its respective officers, directors,
27 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
28 franchisees, licensees, customers (not including private label customers of BodyHealth),

1 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
2 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
3 of them (collectively, “Released Parties”).

4 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
5 claims for violations of Proposition 65 up through the Compliance Date based on exposure to
6 lead from the Covered Products, as well as cadmium from the Cadmium Covered Product and
7 mercury from the Mercury Covered Product, all as set forth in the Notices of Violation. ERC,
8 on behalf of itself only, hereby fully releases and discharges the Released Parties from any and
9 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs,
10 and expenses asserted, or that could have been asserted from the handling, use, or consumption
11 of the Covered Products, as to any alleged violation of Proposition 65 or its implementing
12 regulations arising from the failure to provide Proposition 65 warnings on the Covered
13 Products regarding lead and/or cadmium from the Cadmium Covered Product and/or mercury
14 from the Mercury Covered Product up to and including the Compliance Date.

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

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

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

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

8 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
9 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
10 exposures to lead in the Covered Products, as well as cadmium from the Cadmium Covered
11 Product and mercury from the Mercury Covered Product, all as set forth in the Notices and
12 Complaint.

13 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
14 environmental exposures arising under Proposition 65, nor shall it apply to any of
15 BodyHealth’s products other than the Covered Products.

16 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

20 **10. GOVERNING LAW**

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

23 **11. PROVISION OF NOTICE**

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

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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 Charles W. Poss
9 Environmental Research Center, Inc.
10 3111 Camino Del Rio North, Suite 400
11 San Diego, CA 92108
12 Ph: (619) 500-3090
13 Email: charles.poss@erc501c3.org

14 **FOR BODYHEALTH.COM, LLC:**

15 Chris Alexander
16 BodyHealth.com, LLC
17 745 Main Street
18 Dunedin, FL 34698
19 Email: ceo@bodyhealth.com

20 With a copy to:
21 Sophia B. Castillo
22 Rohit A. Sabnis
23 Keller and Heckman LLP
24 Three Embarcadero Center, Suite 1420
25 San Francisco, CA 94111
26 Ph: (415) 948-2800
27 Email: castillo@khlaw.com
28 sabnis@khlaw.com

and

Dane Keller Rutledge, Esquire
Dane Keller Rutledge
150 E 39th Street, Apt 903
New York, NY 10016
Ph: (646) 712-1210
Email: danerutledge@gmail.com

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

1 Consent Judgment.

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

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

7 **13. EXECUTION AND COUNTERPARTS**

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

11 **14. DRAFTING**

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

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

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

26 **16. ENFORCEMENT**

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

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

7 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

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

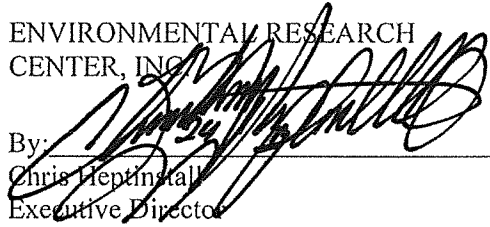
28 ///

1 IT IS SO STIPULATED:

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Dated: 12/18/, 2024

ENVIRONMENTAL RESEARCH
CENTER, INC

By: 
Chris Heptinstall
Executive Director

Dated: 12 DEC, 2024

BODYHEALTH.COM, LLC

By: 
Chris Alexander
Chief Executive Officer

[PROPOSED] 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: _____, 2025

Judge of the Superior Court

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EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

January 5, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

BodyHealth.com, LLC

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

- 1. BodyHealth Perfect Amino Blondie Bar - Lead**
- 2. BodyHealth Perfect Amino Brownie Bar - Lead**
- 3. BodyHealth Perfect Amino Power Meal Chocolate – Lead, Cadmium**
- 4. BodyHealth Perfect Amino Power Meal 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 5, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to BodyHealth.com, LLC and its Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by BodyHealth.com, LLC

I, Charles Poss, declare:

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

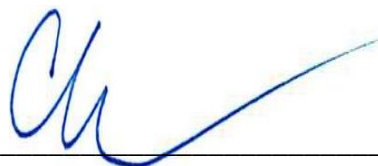
2. I am an attorney for the noticing party.

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

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

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

Dated: January 5, 2024



Charles Poss

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 January 5, 2024, 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
BodyHealth.com, LLC
745 Main St, Ste B
Dunedin, FL 34698

David Minkoff
(Registered Agent for BodyHealth.com, LLC)
301 Turner St
Clearwater, FL 33756

Current President or CEO
BodyHealth.com, LLC
301 Turner St
Clearwater, FL 33756

On January 5, 2024, 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
Post Office Box 70550
Oakland, CA 94612-0550

On January 5, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

James Clinchard, Assistant District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667
EDCDAPROP65@edcda.us

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

January 5, 2024

Page 5

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

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168 North Edwards Street
Independence, CA 93526
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Devin Chandler, Program Coordinator
Lassen County
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Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
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3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
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Walter W. Wall, District Attorney
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Mariposa, CA 95338
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Merced, CA 95340
Prop65@countyofmerced.com

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

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CEPD@countyofnapa.org

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Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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Santa Ana, CA 92703
Prop65notice@ocdapa.org

Morgan Briggs Gire, District Attorney
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Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
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Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
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Prop65@sacda.org

Summer Stephan, District Attorney
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SanDiegoDAProp65@sdca.org

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

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

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

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

January 5, 2024

Page 6

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DAConsumer.Environmental@sjcda.org

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701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

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Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

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

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Prop65@co.tulare.ca.us

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

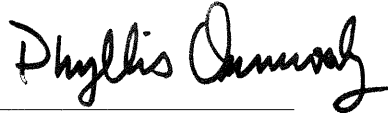
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On January 5, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 5, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

January 12, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

BodyHealth.com, LLC

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

- 1. BodyHealth Get Lean with Organic Coffeeberry Extract – Lead, Mercury**
- 2. BodyHealth Greens Enhanced with Perfect Amino - Lead**
- 3. BodyHealth Reds Enhanced with Perfect Amino - Lead**
- 4. BodyHealth Eliminate - Lead**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 12, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to BodyHealth.com, LLC and its Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by BodyHealth.com, LLC

I, Charles Poss, declare:

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

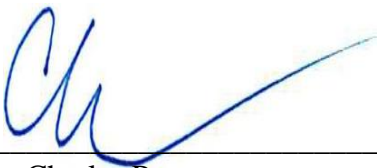
2. I am an attorney for the noticing party.

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

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

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

Dated: January 12, 2024



Charles Poss

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 January 12, 2024, 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
BodyHealth.com, LLC
745 Main St, Ste B
Dunedin, FL 34698

David Minkoff
(Registered Agent for BodyHealth.com, LLC)
301 Turner St
Clearwater, FL 33756

Current President or CEO
BodyHealth.com, LLC
301 Turner St
Clearwater, FL 33756

On January 12, 2024, 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
Post Office Box 70550
Oakland, CA 94612-0550

On January 12, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

James Clinchard, Assistant District Attorney
El Dorado County
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Placerville, CA 95667
EDCDAPROP65@edcda.us

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

January 12, 2024

Page 5

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Prop65notice@ocdapa.org

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Prop65@placer.ca.gov

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San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

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

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

January 12, 2024

Page 6

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Jeannie.Barnes@sonoma-county.org

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Bud Porter, Supervising Deputy District Attorney
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San Jose, CA 95110
EPU@da.sccgov.org

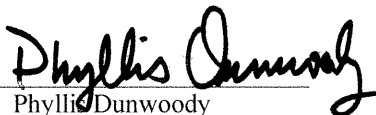
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On January 12, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 12, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Sierra
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100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

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

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

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

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

District Attorney, Tehama
County
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Red Bluff, CA 96080

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

District Attorney, Tuolumne
County
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Sonora, CA 95370

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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