

Michael Freund SBN 99687  
Michael Freund & Associates  
1919 Addison Street, Suite 104  
Berkeley, CA 94704  
Telephone: (510) 499-1992  
Email: freund1@aol.com  
  
Attorney for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER, INC.

Brett Oberst SBN 196219  
Alston & Bird  
350 South Grand Avenue, 51<sup>st</sup> Floor  
Los Angeles, CA 90071  
Telephone: (213) 576-1000  
Email: brett.oberst@alston.com

Attorney for Defendants  
ZICO RISING, INC.; GROUNDFORCE CAPITAL MANAGEMENT,  
LLC, individually and dba POWER PLANT PARTNERS

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

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

**Plaintiff,**  
**vs.**

**ZICO RISING, INC.; GROUNDFORCE  
CAPITAL MANAGEMENT, LLC,  
individually and dba POWER PLANT  
PARTNERS; and DOES 1-100**

**Defendants.**

**CASE NO. 24CV076662**

**[PROPOSED] STIPULATED  
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 22, 2024

Trial Date: None set

**1. INTRODUCTION**

**1.1** On May 22, 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 Zico Rising, Inc. (“Zico”) and Groundforce Capital Management,  
4 LLC, individually and dba Power Plant Partners (“GroundForce Capital Management”)  
5 (collectively “Defendants”) and Does 1-100. In this action, ERC alleges that a number of  
6 products manufactured, distributed, or sold by Defendants 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. The products covered by this Consent Judgment  
9 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
10 Products”) are the products identified in ERC’s Notices of Violation that were served on the  
11 California Attorney General, other public enforcers, and Defendants, dated January 19, 2024  
12 and February 2, 2024, AG Numbers 2024-00256 and 2024-00548 (collectively, the “Notices”),  
13 which are: (1) Zico Natural 100% Coconut Water, (2) Zico Rapid Hydration Hydrate Coconut  
14 Lime Hydration Beverage, (3) Zico Plant-Based Chocolate Coconut Water, and (4) Zico  
15 Hydrate Rapid Hydration Fruit Punch.

16 **1.2** ERC and Zico are hereinafter referred to individually as a “Party” or  
17 collectively as the “Parties.”

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

22 **1.4** For purposes of this Consent Judgment, the Parties do not dispute that Zico is a  
23 business entity that has employed ten or more persons at all times relevant to this action and  
24 qualifies as a “person in the course of doing business” within the meaning of Proposition 65, and  
25 that Zico manufactures, distributes, or sells or previously manufactured, distributed, or sold the  
26 Covered Products.

27 **1.5** The Complaint is based on allegations contained in ERC’s Notices. True and  
28 correct copies of the Notices are attached hereto as **Exhibits A and B** and each is incorporated

herein by reference. More than 60 days have passed since the Notices were served on the Attorney General, public enforcers, and Defendants and no designated governmental entity has filed a Complaint against Defendants with regard to the Covered Products or the alleged violations.

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

**1.7** The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation between ERC and Defendants. Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed as an admission of any fact, issue of law, or violation of law by ERC or any Defendant or by any of their respective past, current, or future officers, directors, shareholders, members, representatives, employees, agents, parent companies, direct and indirect subsidiaries, affiliates, affiliated entities under common ownership, divisions, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, internet marketplaces, or any other upstream or downstream entity in the distribution chain of any Covered Product, or the predecessors, successors, or assigns of each of them.

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

**1.9** The "Effective Date" of this Consent Judgment is the date on which it is entered as a Judgment by this Court. The "Compliance Date" for this Consent Judgment is thirty (30) days following the Effective Date.

## **2. JURISDICTION AND VENUE**

For purposes of this Consent Judgment and any further court action that may become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction

over Zico as to the acts alleged in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through and including the Compliance Date that were or could have been asserted in this action based on the facts alleged in the Notices and Complaint.

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

**3.1** Beginning on the Compliance Date, Zico shall be permanently enjoined from manufacturing for sale in the State of California, “Distributing into the State of California,” or directly selling in the State of California, any Covered Product that exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2. Nothing in this Consent Judgment shall prevent Zico from manufacturing, distributing, or selling Covered Products that comply with Sections 3.2 or 3.3.

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

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

### **3.2 Clear and Reasonable Warnings**

If Zico is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized and comply with the applicable requirements set forth in this Section (“Warning”):

///

**OPTION 1:**

**WARNING:** Consuming this product can expose you to chemicals including lead, which is 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](http://www.P65Warnings.ca.gov/food).

OR

**OPTION 2:**

**WARNING:** Risk of [cancer and] reproductive harm from exposure to lead. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

OR

**OPTION 3:**

**WARNING:** Can expose you to lead, a [carcinogen and] reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

For all options, the Warning shall begin either with the word “**WARNING:**,” as indicated above, or the words “**CA WARNING:**” or “**CALIFORNIA WARNING:**” in all capital letters and bold print. Zico shall use the phrase “cancer and” in the Option 1 and Option 2 Warnings or “carcinogen and” in the Option 3 Warning (each phrase referred to individually as a “Cancer Phrase”) if Zico knows that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Zico knows that another Proposition 65 chemical is present at a level that requires a cancer warning. If there is a chemical present at a level that requires a cancer warning, the chemical requiring use of the Cancer Phrase in the Warning shall always be identified.

The Warning shall be securely affixed to or printed upon the label of each Covered Product (the “Label Warning Method”), and it must be set off from other surrounding information and enclosed in a box. For Covered Products sold in brick-and-mortar stores, in lieu of or in addition to using the Label Warning Method, the Warning may be prominently displayed on a placard, sign, shelf tag, or shelf sign at each point of display of the product, or provided via any electronic device or process that automatically provides the Warning to the purchaser prior to or during the purchase of the Covered Product(s), without requiring the purchaser to seek out the

Warning (the “Brick-and-Mortar Warning Method”). A Warning is not prominently displayed if the purchaser has to search for it in the general content of the placard, sign, shelf tag, or shelf sign.

In addition, for any Covered Product sold by Zico over the internet on websites that it owns or controls, the Warning shall appear on the Covered Product’s primary display page or on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. If the Warning is provided on the checkout page, an asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning. The Warning may be provided by a clearly marked hyperlink using the word “**WARNING**” or the words “**CA WARNING**” or “**CALIFORNIA WARNING**” in all capital and bold letters. If the Warning is provided by a clearly marked hyperlink, the hyperlink must go directly to a page prominently displaying the Warning without content that detracts from the Warning. A Warning is not prominently displayed if the purchaser has to search for it in the general content of the website.

If a Covered Product is being sold by an online third-party seller or downstream reseller (collectively referred to as “Third-Party Seller(s)”), who is subject to Proposition 65 and known to and authorized by Zico to sell such Covered Product to California consumers, and Zico cannot itself add a warning to the authorized Third-Party Seller’s website because Zico lacks control over such authorized Third-Party Seller’s website, including, but not limited to, Amazon when consumers are directed to Amazon via Zico’s website, then Zico must (a) notify the authorized Third-Party Seller and/or its authorized agent, in writing, of the authorized Third-Party Seller’s duty to provide an internet warning as part of the condition of sale of the Covered Product to California consumers, and (b) comply with 27 C.C.R. § 25600.2 (2025 or as subsequently renumbered) including, but not limited to, by providing the information required by 27 C.C.R. § 25600.2 (2025 or as subsequently renumbered), including the warning language required by this Consent Judgment for Covered Products sold on the internet to California consumers, to any such authorized Third-Party Seller (or its authorized agent). The written notice required by this Section shall instruct the Third-Party Seller that it is responsible for providing the Warning on its website for Covered Products sold over the internet to California consumers and that the Warning shall be

provided with such conspicuousness, as compared with other words, statements or designs, as to render the Warning likely to be seen, read, and understood by an ordinary individual prior to sale. Confirmation of receipt of the written notice and any renewed written notices must be received electronically or in writing from the authorized Third Party Seller, or its authorized agent, to which Zico sent the written notice. If Zico is unable to obtain such confirmation of receipt, Zico shall confirm delivery of the notice and retain such confirmation of delivery in written or electronic form for at least one year.

In all cases, the Warning must be displayed with such conspicuousness, as compared with other words, statements or designs on the label, labeling, placard, sign, shelf tag, or shelf sign, or on Zico's website or the authorized Third Party Seller's website, whichever is applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product. For the Option 2 and Option 3 Warnings, the Warning may not appear in a type-size smaller than 6-point type. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

Where a label, labeling, placard, sign, shelf tag, or shelf sign used to provide the Warning for a Covered Product includes consumer information about the Covered Product in a language other than English, the Warning must also be provided in that language in addition to English.

For purposes of this Consent Judgment, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper; and the term "labeling" means any written, printed, graphic, or electronically provided communication that accompanies a Covered Product, such as a package insert.

### **3.3 Conforming Covered Products**

A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the exposure

methodology set forth in Section 3.1.2, and that is not known by Zico to contain other chemicals that violate Proposition 65's safe harbor thresholds.

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

**3.4.1** Beginning within one year of the Effective Date, Zico shall arrange for lead testing of the Covered Products at least once a year for a minimum of three consecutive years by arranging for testing of three (3) randomly selected samples of each of the Covered Products that at that time Zico intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California" ("California Covered Products"). If tests conducted pursuant to this Section demonstrate that no Warning is required for a California Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that California Covered Product. However, if during or after the three-year testing period, Zico changes ingredient suppliers for any California Covered Product and/or reformulates any California Covered Product, Zico shall test that California Covered Product annually for at least two consecutive years after such change is made.

**3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the highest lead detection result of the three (3) randomly selected samples of any California Covered Product will be controlling.

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

**3.4.4** All testing pursuant to this Consent Judgment shall be performed by an independent third party laboratory that is certified by the California Environmental Laboratory Accreditation Program, or registered with the United States Food & Drug Administration, or accredited by a member of the International Laboratory Accreditation Cooperation (ILAC) and



1 a signatory of the ILAC Mutual Recognition Arrangement (ILAC MRA).

2 **3.4.5** Nothing in this Consent Judgment shall limit Zico's ability to conduct,  
3 or require that others conduct, additional testing of the Covered Products, including the raw  
4 materials used in their manufacture.

5 **3.4.6** Within thirty (30) days of ERC's written request, which may be made no  
6 more than once a year or upon a showing of good cause for any additional request, Zico shall  
7 deliver to ERC lab reports obtained in compliance with Section 3.4. Zico shall retain all test  
8 results and documentation for a period of five years from the date of each test, and ERC shall  
9 treat as confidential all such information provided by Zico.

10 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC  
11 from obtaining and relying upon its own testing for purposes of enforcement, so long as such  
12 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent  
13 Judgment is intended by either Party to set a precedent for the level of lead or other chemicals  
14 that is permissible in consumer products under Proposition 65.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
17 payments, attorneys' fees, and costs that may be recovered as a result of the Notices or  
18 Complaint, subject to Section 4.6, Zico shall make a total payment to ERC of \$150,000.00  
19 ("Total Settlement Amount") within ten (10) business days of the Effective Date ("Due Date").  
20 Zico shall make this payment by wire transfer to ERC's account, for which ERC will provide  
21 to Zico the necessary account information via electronic mail on or before forty-five (45) days  
22 after the execution of this Consent Judgment. The Total Settlement Amount shall be  
23 apportioned as follows:

24 **4.2** \$30,750.00 shall be considered a civil penalty pursuant to California Health and  
25 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$23,062.50) of the civil penalty to  
26 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
28 Code section 25249.12(c). ERC will retain the remaining 25% (\$7,687.50) of the civil penalty.

1           **4.3**     \$3,776.12 shall be distributed to ERC as reimbursement to ERC for reasonable  
2 costs incurred in bringing this action.

3           **4.4**     \$23,046.96 shall be distributed to ERC as an Additional Settlement Payment  
4 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to  
5 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities  
6 that address the same public issues as allegedly caused by Defendants in this matter. These  
7 activities are detailed below and support ERC’s overarching goal of reducing and/or  
8 eliminating hazardous and toxic chemicals in products in California. ERC asserts that its  
9 activities have had, and will continue to have, a direct and primary effect within the State of  
10 California because California consumers will be benefitted by the reduction and/or elimination  
11 of exposure to lead in the Covered Products and other nutritional supplement products and/or  
12 by providing clear and reasonable warnings to California consumers prior to ingestion of the  
13 products.

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

1 products that reach California consumers by providing access to free testing for lead in  
2 products (products submitted to the program are screened for ingredients that are suspected to  
3 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory  
4 for testing, and the results shared with the consumer that submitted the product).

5 ERC shall be fully accountable in that it will maintain adequate records to document  
6 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds  
7 are being spent only for the proper, designated purposes described in this Consent Judgment.  
8 ERC shall provide the Attorney General, within thirty (30) days of any request, copies of  
9 documentation demonstrating how such funds have been spent.

10 **4.5** \$40,920.00 shall be distributed to Michael Freund & Associates as  
11 reimbursement of ERC's reasonable and necessary outside attorneys' fees incurred, while  
12 \$51,506.92 shall be distributed to ERC for its reasonable and necessary in-house legal fees  
13 incurred. Except as explicitly provided herein, each Party shall bear its own fees and costs.

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

## 22 **5. MODIFICATION OF CONSENT JUDGMENT**

23 **5.1** After the Court enters the Consent Judgment, it may be modified, except for the  
24 settlement amount and payment terms as outlined in Section 4, (i) by written stipulation of the  
25 Parties and upon entry by the Court of a modified consent judgment or (ii) by motion or  
26 application of one or both Parties, based upon an agreement to modify the Consent Judgment,  
27 which agreement shall not be unreasonably withheld or delayed, and upon entry by the Court  
28 of a modified consent judgment.

1           **5.2**     If either Party proposes modifying this Consent Judgment under Section 5.1,  
2 then it must provide written notice to the other Party of its intent (“Notice of Intent”). If the  
3 Party receiving the Notice of Intent seeks to meet and confer regarding the proposed  
4 modification, then it must provide written notice to the Party seeking the modification within  
5 thirty (30) days of receiving the Notice of Intent. If notice of a request to meet and confer is  
6 made within thirty (30) days of receiving the Notice of Intent, then the Parties shall meet and  
7 confer in good faith as required in this Section. The Parties shall meet in person, via remote  
8 meeting, or by telephone within thirty (30) days of the notification of the request to meet and  
9 confer. Within thirty (30) days of such meeting, if the Party receiving the Notice of Intent  
10 disputes the proposed modification, it shall provide a written basis for its position. The Parties  
11 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
12 remaining disputes. If the Parties are unable to resolve any remaining dispute related to the  
13 Notice of Intent during this time period, then the Parties may agree in writing to different  
14 deadlines for the meet-and-confer period but are not required to do so.

15           **5.3**     In the event that either Party initiates or otherwise requests a modification under  
16 Section 5.1, and the meet and confer process leads to an agreed upon motion or joint  
17 application for a modification of the Consent Judgment, then the Party that initiated or  
18 otherwise requested the modification shall reimburse the other Party for its reasonable costs  
19 and attorney’s fees incurred for the time spent in the meet-and-confer process and filing and  
20 arguing the motion or application.

21       **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
22 **JUDGMENT**

23           **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or  
24 terminate this Consent Judgment.

25           **6.2**     If ERC alleges that any Covered Product fails to qualify as a Conforming  
26 Covered Product and for which ERC alleges that no Warning has been provided, then ERC  
27 shall inform Zico in a reasonably prompt manner of its test results, including information  
28 sufficient to permit Zico to identify the Covered Products at issue. Zico shall, within sixty (60)

1 days following such notice, provide ERC with either testing information, from an independent  
2 third-party laboratory that shows that the Covered Products at issue are Conforming Covered  
3 Products, or proof reasonably satisfactory to ERC that a Warning was provided, in either case  
4 demonstrating Zico's compliance with the Consent Judgment. In addition, if the alleged non-  
5 compliance is cured, to ERC's reasonable satisfaction, within the sixty (60) days following  
6 such notice, then Zico shall not be deemed in breach or violation of Proposition 65 or this  
7 Consent Judgment in any respect and ERC shall take no further action to enforce Proposition  
8 65 or this Consent Judgment, ERC shall not be entitled to seek or recover any civil penalties,  
9 and ERC and its counsel shall not be entitled to seek or recover any attorneys' fees or costs, or  
10 any other available remedies arising from or relating to the alleged failure to comply with  
11 Proposition 65 or the terms of this Consent Judgment, and the matter shall be deemed to be  
12 resolved by and between the Parties as to such products. The Parties shall first attempt to  
13 resolve any alleged breach or violation of Proposition 65 or this Consent Judgment prior to  
14 ERC taking any further legal action.

## 15 **7. APPLICATION OF CONSENT JUDGMENT**

16 This Consent Judgment may apply to, be binding upon, and benefit ERC, Defendants, and  
17 each of their respective past, current, and future officers, directors, shareholders, members,  
18 representatives, employees, agents, parent companies, direct and indirect subsidiaries, affiliates,  
19 affiliated entities under common ownership, divisions, suppliers, franchisees, licensees, customers  
20 (excluding private labelers), distributors, wholesalers, retailers, internet marketplaces, and all  
21 other upstream and downstream entities in the distribution chain of any Covered Product, and the  
22 predecessors, successors, and assigns of each of them. This Consent Judgment shall have no  
23 application to any Covered Product that is distributed or sold exclusively outside the State of  
24 California and that is not intended by Zico to be used by California consumers.

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

26 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
27 behalf of itself and in the public interest, and Defendants and each of their respective past,  
28 current, and future officers, directors, shareholders, members, representatives, employees,

1 agents, parent companies, direct and indirect subsidiaries, affiliates, affiliated entities under  
2 common ownership, divisions, suppliers, franchisees, licensees, customers (not including  
3 private label customers of Zico), distributors, wholesalers, retailers, internet marketplaces, and  
4 all other upstream and downstream entities in the distribution chain of any Covered Product,  
5 and the predecessors, successors, and assigns of each of them (collectively, “Released  
6 Parties”).

7       **8.2**     ERC, acting in the public interest, and on behalf of its past and current agents,  
8 representatives, attorneys, successors, and assigns, hereby releases the Released Parties from  
9 any and all claims for violations of Proposition 65 up through the Compliance Date based on  
10 exposure to lead from the Covered Products as set forth in the Notices of Violation. ERC, on  
11 behalf of itself only, and on behalf of its past and current agents, representatives, attorneys,  
12 successors, and assigns, hereby fully releases and discharges the Released Parties from any and  
13 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs,  
14 and expenses asserted, or that could have been asserted from the handling, use, or consumption  
15 of the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
16 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
17 Products regarding lead at any time prior to and including the Compliance Date. However,  
18 after the Compliance Date, Third-Party Sellers that do not provide a Warning within a  
19 reasonable time, but in no event more than 60 days, after being instructed or notified by Zico to  
20 do so as outlined in Section 3.2, are not released from liability for violations of Proposition 65.

21       **8.3**     ERC on its own behalf only, and Zico on its own behalf only, further waive and  
22 release any and all claims they may have against each other for all actions or statements made  
23 or undertaken in the course of seeking or opposing enforcement of Proposition 65 in  
24 connection with the Notices and Complaint at any time prior to and including the Compliance  
25 Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s right to seek  
26 to enforce the terms of this Consent Judgment.

27       **8.4**     It is possible that other claims not known to the Parties, arising out of the facts  
28 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be

1 discovered. ERC on behalf of itself only, and Zico on behalf of itself only, acknowledge that  
2 this Consent Judgment is expressly intended to cover and include all such claims up through  
3 and including the Compliance Date, including all rights of action therefore. ERC and Zico  
4 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown  
5 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
6 claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, and Zico on behalf of itself only, acknowledge and understand  
12 the significance and consequences of this specific waiver of California Civil Code section  
13 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 Notices and Complaint. However,  
17 after the Compliance Date, Third-Party Sellers that do not provide a Warning within a  
18 reasonable time, but in no event more than 60 days, after being instructed or notified by Zico to  
19 do so as outlined in Section 3.2, are not in compliance with Proposition 65 and are not released  
20 from liability for violations of Proposition 65.

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

## 24 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

28 ///

1     **10. GOVERNING LAW**

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

4     **11. PROVISION OF NOTICE**

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

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

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

14 With a copy to:

15 Michael Freund  
16 Michael Freund & Associates  
17 1919 Addison Street, Suite 104  
18 Berkeley, CA 94704  
19 Telephone: (510) 499-1992  
20 Email: freund1@aol.com

21     **FOR ZICO RISING, INC.:**

22 Alan George  
23 President & CFO  
24 12501 Seal Beach Blvd.  
25 Suite 270  
26 Seal Beach, CA 90740  
27 Email: alan@zicorising.com

28 With a copy to:

Jeffrey Rosenfeld  
Brett Oberst  
Alston & Bird  
350 South Grand Avenue, 51<sup>st</sup> Floor  
Los Angeles, CA 90071  
Telephone: (213) 576-1000  
Email: jeffrey.rosenfeld@alston.com  
brett.oberst@alston.com

///



1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
3 Motion for Court Approval. The Parties shall use their commercially reasonable best efforts to  
4 support entry of this Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment  
6 or the Court finds any term in this Consent Judgment unacceptable, the Parties shall use their  
7 commercially reasonable best efforts to resolve the concern in a timely manner, and if possible  
8 prior to the hearing on the motion, agree to and submit an amended proposed Consent  
9 Judgment that addresses the objection or finding and retains all other terms set forth herein.

10 **12.3** If this [Proposed] Stipulated Consent Judgment is not approved by the Court, it  
11 shall be void and have no force or effect.

12 **12.4** If this [Proposed] Consent Judgment is entered by the Court, then ERC shall  
13 prepare and file a request for dismissal without prejudice as to its claims against GroundForce  
14 Capital Management within thirty (30) days after the Total Settlement Amount payment  
15 required by Section 4.1 is received by ERC from Zico.

16 **13. EXECUTION AND COUNTERPARTS**

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

20 **14. DRAFTING**

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

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

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

7     **16. ENFORCEMENT**

8             ERC may, by motion or order to show cause before the Superior Court of Alameda  
9 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
10 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
11 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
12 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
13 Proposition 65 or other laws, subject to the terms of the Consent Judgment, ERC shall not be  
14 otherwise limited to enforcement of this Consent Judgment, but may seek in another action  
15 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with  
16 Proposition 65 or other laws.

17    **17. ENTIRE AGREEMENT, AUTHORIZATION**

18            **17.1** This Consent Judgment contains the sole and entire agreement and  
19 understanding of the Parties with respect to the entire subject matter herein, including any and  
20 all prior discussions, negotiations, commitments, and understandings related thereto. No  
21 representations, oral or otherwise, express or implied, other than those contained herein have  
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
23 herein, shall be deemed to exist or to bind any Party.

24            **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

28            Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for

1 Court Approval and thereby this Consent Judgment will come before the Court upon the request  
2 of the Parties. The Parties request the Court to fully review this Consent Judgment and, being  
3 fully informed regarding the matters which are the subject of this action, to:

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

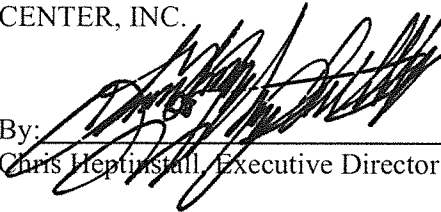
7 (2) Make the findings pursuant to California Health and Safety Code section  
8 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment; and

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

11 **IT IS SO STIPULATED:**

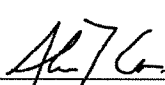
12 Dated: 4/14/, 2025

ENVIRONMENTAL RESEARCH  
CENTER, INC.

13  
14  
15 By:   
Chris Heptinstall, Executive Director

16  
17 Dated: April 10, 2025

ZICO RISING, INC.

18  
19 By:   
20 Alan George, President & CFO

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///


27 ///

28 ///

1 **APPROVED AS TO FORM:**


2  
3 Dated: 4/13/, 2025

MICHAEL FREUND & ASSOCIATES

4  
5 By:   
6 Michael Freund  
7 Attorney for Plaintiff Environmental  
8 Research Center, Inc.

9 Dated: April 10, 2025

ALSTON & BIRD

10 By:   
11 Brett Oberst  
12 Attorney for Zico Rising, Inc. and  
13 Groundforce Capital Management, LLC,  
14 individually and dba Power Plant Partners  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court

# **EXHIBIT A**

**Michael Freund & Associates**

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

Michael Freund, Esq.

January 19, 2024

**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:

**Zico Rising, Inc.**

**Groundforce Capital Management, LLC, individually and dba Power Plant Partners**

**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. Zico Natural 100% Coconut Water – Lead**
- 2. Zico Rapid Hydration Hydrate Coconut Lime Hydration Beverage - 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 January 19, 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 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 Zico Rising, Inc., Groundforce Capital Management, LLC, individually and dba Power Plant Partners 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 Zico Rising, Inc. and Groundforce Capital Management, LLC, individually and dba Power Plant Partners**

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: January 19, 2024

---

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 January 19, 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  
Zico Rising, Inc.  
12501 Seal Beach Blvd, Ste 270  
Seal Beach, CA 90740

Current President or CEO  
Groundforce Capital Management, LLC,  
individually and dba Power Plant Partners  
38 Miller Ave, Ste 20  
Mill Valley, CA 94941

Daniel Gluck  
(Registered Agent for Groundforce Capital  
Management, LLC, individually and dba Power  
Plant Partners)  
38 Miller Ave, Ste 20  
Mill Valley, CA 94941

Corporation Service Company  
(Registered Agent for Groundforce Capital  
Management, LLC, individually and dba  
Power Plant Partners)  
251 Little Falls Drive  
Wilmington, DE 19808

Alan George  
(Registered Agent for Zico Rising, Inc.)  
12501 Seal Beach Blvd, Ste 270  
Seal Beach, CA 90740

Cogency Global Inc.  
(Registered Agent for Zico Rising, Inc.)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

On January 19, 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  
Oakland, CA 94612-0550

On January 19, 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** 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

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

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

January 19, 2024

Page 5

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

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

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

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

Devin Chandler, Program Coordinator  
Lassen County  
2950 Riverside Dr  
Susanville, CA 96130  
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney  
Marin County  
3501 Civic Center Drive, Suite 145  
San Rafael, CA 94903  
consumer@marincounty.org

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

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

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

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

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

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@ocdapa.org

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

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

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

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

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

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

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

January 19, 2024

Page 6

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

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

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

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

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

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

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

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

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

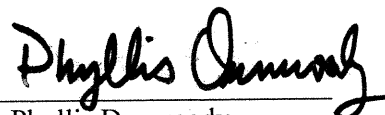
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On January 19, 2024, 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 January 19, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

January 19, 2024

Page 7

**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> 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 4<sup>th</sup> 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, 2<sup>nd</sup>  
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 2<sup>nd</sup> 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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



## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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

# **EXHIBIT B**

**Michael Freund & Associates**

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

Michael Freund, Esq.

February 2, 2024

**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:

**Zico Rising, Inc.**

**Groundforce Capital Management, LLC, individually and dba Power Plant Partners**

**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. Zico Plant-Based Chocolate Coconut Water - Lead**
- 2. Zico Hydrate Rapid Hydration Fruit Punch - 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 February 2, 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 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 Zico Rising, Inc., Groundforce Capital Management, LLC, individually and dba Power Plant Partners 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 Zico Rising, Inc. and Groundforce Capital Management, LLC, individually and dba Power Plant Partners**

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: February 2, 2024

---

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 February 2, 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  
Zico Rising, Inc.  
12501 Seal Beach Blvd, Ste 270  
Seal Beach, CA 90740

Current President or CEO  
Groundforce Capital Management, LLC,  
individually and dba Power Plant Partners  
38 Miller Ave, Ste 20  
Mill Valley, CA 94941

Daniel Gluck  
(Registered Agent for Groundforce Capital  
Management, LLC, individually and dba Power  
Plant Partners)  
38 Miller Ave, Ste 20  
Mill Valley, CA 94941

Corporation Service Company  
(Registered Agent for Groundforce Capital  
Management, LLC, individually and dba  
Power Plant Partners)  
251 Little Falls Drive  
Wilmington, DE 19808

Alan George  
(Registered Agent for Zico Rising, Inc.)  
12501 Seal Beach Blvd, Ste 270  
Seal Beach, CA 90740

Cogency Global Inc.  
(Registered Agent for Zico Rising, Inc.)  
850 New Burton Rd, Ste 201  
Dover, DE 19904

On February 2, 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  
Oakland, CA 94612-0550

On February 2, 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** 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

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

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

February 2, 2024

Page 5

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

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

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

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

Devin Chandler, Program Coordinator  
Lassen County  
2950 Riverside Dr  
Susanville, CA 96130  
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney  
Marin County  
3501 Civic Center Drive, Suite 145  
San Rafael, CA 94903  
consumer@marincounty.org

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

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

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

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

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

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@ocdapa.org

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

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

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

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

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

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



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

February 2, 2024

Page 6

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

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

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

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

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

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

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

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

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

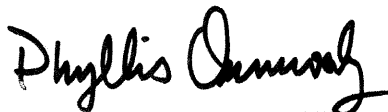
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On February 2, 2024, 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 February 2, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

February 2, 2024

Page 7

**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> 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 4<sup>th</sup> 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, 2<sup>nd</sup>  
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 2<sup>nd</sup> 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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