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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

**MITRA-9 BRANDS LLC; MARIJUANA
COMPANY OF AMERICA, INC.;
CDISTRO, INC.; CDISTRO, LLC; and
DOES 1-100**

Defendants.

CASE NO. 24CV073459

**[PROPOSED] AMENDED
STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 29, 2024
Trial Date: April 6, 2026

1. INTRODUCTION

1.1 On April 29, 2024, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Mitra-9 Brands LLC (“Mitra-9”), Marijuana Company of America, Inc., cDistro, Inc., cDistro, LLC and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by Mitra-9 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Mitra 9 Relax Pak Kava Extract Strawberry Watermelon, (2) Mitra 9 Kratom Seltzer Sparkling Dragon Fruit Flavor, (3) Mitra 9 Kratom Seltzer Sparkling Tangerine Flavor, (4) Mitra 9 Sparkling Kandy Kava, (5) Mitra 9 Kratom Seltzer Sparkling Black Cherry Flavor, (6) Mitra 9 Kratom Seltzer Sparkling Tropical Flavor, (7) Mitra 9 Sparkling Lemonade Kava, (8) Mitra 9 Sparkling Orange Dreamsicle Kava, and (9) Mitra 9 Sparkling Strawberry Watermelon Kava.

1.2 ERC and Mitra-9 are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

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

1.4 For purposes of this Amended Stipulated Consent Judgment (“Consent Judgment”), the Parties agree that Mitra-9 is a business entity that has employed ten or more persons at all times relevant to this action and qualifies as a “person in the course of doing business” within the meaning of Proposition 65. Mitra-9 manufactures, distributes, and/or sells the Covered Products.

1.5 The Complaint is based on allegations contained in ERC’s Notices of Violation dated February 8, 2024 and February 15, 2024 that were served on the California Attorney General, other public enforcers, and Mitra-9 (“Notices”). True and correct copies of the 60-Day Notices dated February 8, 2024, and February 15, 2024, are attached hereto as **Exhibits A and B** and each is incorporated herein by reference. More than 60 days have passed since the

1 Notices were served on the Attorney General, public enforcers, and Mitra-9 and no designated
2 governmental entity has filed a Complaint against Mitra-9 with regard to the Covered Products
3 or the alleged violations.

4 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
5 California consumers exposes them to lead without first receiving clear and reasonable
6 warnings from Mitra-9, which is in violation of California Health and Safety Code section
7 25249.6. Mitra-9 denies all material allegations contained in the Notices and Complaint.

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

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

18 **1.9** The Effective Date of this Consent Judgment is five (5) days after the date on
19 which it is entered as a Judgment by this Court.

20 **2. JURISDICTION AND VENUE**

21 For purposes of this Consent Judgment and any further court action that may become
22 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
23 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
24 over Mitra-9 as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
25 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
26 claims up through and including the Effective Date that were or could have been asserted in this
27 action based on the facts alleged in the Notices and Complaint.

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3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning fifty-five (55) days after the Effective Date (the "Compliance Date"), Mitra-9 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.

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 Mitra-9 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 Mitra-9 is required to provide a warning pursuant to Section 3.1, Mitra-9 shall provide one of the following warning statements ("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.

OR

OPTION 2:

 **WARNING:** [Cancer and]Reproductive Harm - www.P65Warnings.ca.gov/food.

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OR

OPTION 3:

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

For all Warning 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. Mitra-9 shall use the phrase “cancer and” in the Option 1 and Option 2 Warnings or “carcinogen and” in the Option 3 Warning (each referred to individually as a “Cancer Phrase”) if Mitra-9 has reason to believe 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 Mitra-9 has reason to believe that another Proposition 65 chemical is present at a level requiring 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 Option 2 Warning may only be used until January 1, 2028. Any product that is manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of when the product is sold to a consumer. For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word “**WARNING**.” Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

Beginning on the Compliance Date, for any Covered Product sold over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product or on the Covered Product’s primary display page or another place where a consumer is reasonably likely to encounter the Warning prior to completing the purchase. An asterisk or other identifying method must be utilized to identify which products are subject to the Warning. The Warning may be provided with a conspicuous hyperlink stating “**WARNING**”, or the words “**CA WARNING**” or “**CALIFORNIA WARNING**”, in all capital

1 and bold letters so long as the hyperlink goes directly to a page prominently displaying the
2 Warning without content that detracts from the Warning. A Warning is not prominently displayed
3 if the purchaser has to search for it in the general content of the website. In addition, beginning on
4 the Compliance Date, the Warning shall be securely affixed to or printed upon the label of each
5 Covered Product, and it must be set off from other surrounding information and enclosed in a box.

6 The Warning shall be at least the same size as the largest of any other health or safety
7 warnings also appearing on the website or on the label and in no event shall an Option 2 or Option
8 3 Warning be in a type size smaller than 6-point type. No statements intended to or likely to have
9 the effect of diminishing the impact of the Warning on the average lay person shall accompany
10 the Warning. Further, no statements may accompany the Warning that state or imply that the
11 source of the listed chemical has an impact on or results in a less harmful effect of the listed
12 chemical.

13 Mitra-9 must display the above Warning with such conspicuousness, as compared with
14 other words, statements or designs on the label, or on its website, if applicable, to render the
15 Warning likely to be read and understood by an ordinary individual under customary conditions
16 of purchase or use of the product. Where a sign or label used to provide the Warning for a
17 Covered Product includes consumer information about the Covered Product in a language other
18 than English, the Warning must also be provided in that language in addition to English.

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

22 So long as Mitra-9 can provide adequate documentation, if requested in writing by ERC,
23 Covered Products manufactured and not in the possession or under the control of Mitra-9 on or
24 prior to the Compliance Date, or that have been shipped or Distributed into the State of California
25 by Mitra-9 and are, therefore, not in the possession or under the control of Mitra-9 prior to the
26 Compliance Date, are not bound by the injunctive terms set forth in this Section 3, including but
27 not limited to the Daily Lead Exposure Level and the Warning and Testing Requirements, and are
28 instead permitted to be sold as is to California consumers and are expressly released by Section 8.

1 **3.3 Conforming Covered Products**

2 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
3 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure
4 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
5 3.4, and that is not known by Mitra-9 to contain other chemicals that violate Proposition 65’s safe
6 harbor thresholds.

7 **3.4 Testing and Quality Control Methodology**

8 **3.4.1** Beginning within one year of the Effective Date, for Covered Products
9 that Mitra-9 manufactures for sale in the State of California, Distributes into the State of
10 California, or directly sells into the State of California, Mitra-9 shall arrange for lead testing of
11 the Covered Products at least once a year for a minimum of three consecutive years by
12 arranging for testing of three (3) randomly selected samples of each of the Covered Products,
13 in the form intended for sale to the California end-user, which Mitra-9 intends to sell or is
14 manufacturing for sale in California, directly selling to a consumer in California or
15 “Distributing into the State of California.” If tests conducted pursuant to this Section
16 demonstrate that no Warning is required for a Covered Product during each of three
17 consecutive years, then the testing requirements of this Section will no longer be required as to
18 that Covered Product. However, if during or after the three-year testing period, Mitra-9
19 reformulates any of the Covered Products, Mitra-9 shall test that Covered Product annually for
20 at least two (2) consecutive years after such change is made.

21 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
22 lead detection result of the three (3) randomly selected samples of the Covered Products will
23 be controlling.

24 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
25 laboratory method that complies with the performance and quality control factors appropriate
26 for the method used, including limit of detection and limit of quantification, sensitivity,
27 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
28 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005

1 mg/kg.

2 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
3 independent third party laboratory certified by the California Environmental Laboratory
4 Accreditation Program or an independent third-party laboratory that is registered with the
5 United States Food & Drug Administration.

6 **3.4.5** Nothing in this Consent Judgment shall limit Mitra-9's ability to
7 conduct, or require that others conduct, additional testing of the Covered Products, including
8 the raw materials used in their manufacture.

9 **3.4.6** Within thirty (30) days of ERC's written request, Mitra-9 shall deliver
10 lab reports obtained pursuant to Section 3.4 to ERC. Mitra-9 shall retain all test results and
11 documentation for a period of three years from the date of each test. ERC shall treat all
12 documents provided by Mitra-9 pursuant to this Section as confidential.

13 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
14 any Covered Product for which Mitra-9 is providing a Warning, continuously and without
15 interruption from the Compliance Date, pursuant to Section 3.2 of this Consent Judgment. In
16 the event a Warning is provided after the Compliance Date but Mitra-9 thereafter contemplates
17 not providing the Warning, Mitra-9 shall not stop providing the Warning until it has
18 undertaken the testing and reporting requirements of Section 3.4 of this Consent Judgment to
19 determine that no Warning is required. Such testing shall not be required only in the event that
20 Mitra-9 can show to the reasonable satisfaction of ERC that the cessation in providing the
21 Warning was a temporary error that was resolved when discovered.

22 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
23 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
24 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent
25 Judgment is intended by either party to set a precedent for the level of lead or other chemicals
26 that is permissible in consumer products under Proposition 65.

27 **4. SETTLEMENT PAYMENT**

28 **4.1** In full satisfaction of all potential civil penalties, additional settlement

1 payments, attorney's fees, and costs, Mitra-9 shall make a total payment of \$67,500.00 ("Total
2 Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). Mitra-9 shall
3 make this payment by wire transfer to ERC's account, for which ERC will give Mitra-9 the
4 necessary account information. The Total Settlement Amount shall be apportioned as follows:

5 **4.2** \$7,500.00 shall be considered a civil penalty pursuant to California Health and
6 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$5,625.00) of the civil penalty to the
7 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
8 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
9 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,875.00) of the civil penalty.

10 **4.3** \$7,731.89 shall be distributed to ERC as reimbursement to ERC for reasonable
11 costs incurred in bringing this action.

12 **4.4** \$18,300.00 shall be distributed to Michael Freund & Associates as
13 reimbursement of ERC's attorney's fees, while \$33,968.11 shall be distributed to ERC for its
14 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
15 costs.

16 **4.5** In the event that Mitra-9 fails to remit the Total Settlement Amount owed under
17 Section 4 of this Consent Judgment on or before the Due Date, Mitra-9 shall be deemed to be
18 in material breach of its obligations under this Consent Judgment. ERC shall provide written
19 notice of the delinquency to Mitra-9 via electronic mail. If Mitra-9 fails to deliver the Total
20 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
21 shall accrue interest at the statutory judgment interest rate provided in the California Code of
22 Civil Procedure section 685.010. Additionally, Mitra-9 agrees to pay ERC's reasonable
23 attorney's fees and costs for any efforts to collect the payment due under this Consent
24 Judgment.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

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

1 modified consent judgment.

2 **5.2** If either Party seeks to modify this Consent Judgment under Section 5.1, then
3 the requesting party must provide written notice to the non-requesting party of its intent
4 (“Notice of Intent”). If the non-requesting party seeks to meet and confer regarding the
5 proposed modification in the Notice of Intent, then it must provide written notice to the
6 requesting party within thirty (30) days of receiving the Notice of Intent. If the non-requesting
7 party notifies the requesting party in a timely manner of its intent to meet and confer, then the
8 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
9 person, via remote meeting, or by telephone within thirty (30) days of notification of an intent
10 to meet and confer. Within thirty (30) days of such meeting, if the non-requesting party
11 disputes the proposed modification, it shall provide to the requesting party a written basis for
12 its position. The Parties shall continue to meet and confer for an additional thirty (30) days in
13 an effort to resolve any remaining disputes. Should it become necessary, the Parties may agree
14 in writing to different deadlines for the meet-and-confer period.

15 **5.3** In the event that Mitra-9 initiates or otherwise requests a modification under
16 Section 5.1, and the meet and confer process leads to a joint motion or joint application for a
17 modification of the Consent Judgment, Mitra-9 shall reimburse ERC its costs and reasonable
18 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the
19 motion or application.

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

22 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
23 terminate this Consent Judgment.

24 **6.2** If ERC alleges that any Covered Product, not including those Covered Products
25 that were not in the possession or under the control of Mitra-9 on or prior to the Compliance
26 Date, fails to qualify as a Conforming Covered Product (for which ERC alleges that no
27 Warning has been provided), then ERC shall inform Mitra-9 in a reasonably prompt manner of
28 its test results, including information sufficient to permit Mitra-9 to identify the Covered

Products at issue. Mitra-9 shall, within forty-five (45) days following such notice, provide ERC with testing information, from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4 and/or otherwise demonstrating Mitra-9's compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

7. APPLICATION OF CONSENT JUDGMENT

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

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

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

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

1 Products regarding lead to and including the Effective Date.

2 **8.3** ERC on its own behalf only, and Mitra-9 on its own behalf only, further
3 waive and release any and all claims they may have against each other for all actions or
4 statements made or undertaken in the course of seeking or opposing enforcement of
5 Proposition 65 in connection with the Notices and Complaint up through and including the
6 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
7 right to seek to enforce the terms of this Consent Judgment.

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

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

20 ERC on behalf of itself only, and Mitra-9 on behalf of itself only, acknowledge and understand
21 the significance and consequences of this specific waiver of California Civil Code section
22 1542.

23 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
24 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
25 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

26 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
27 environmental exposures arising under Proposition 65, nor shall it apply to any of Mitra-9's
28 products other than the Covered Products that are manufactured for sale in California, sold to

consumers in California, or "Distributed into the State of California."

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

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

With a copy to:
Michael Freund
Michael Freund & Associates
1919 Addison Street, Suite 104
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Telephone: (510) 499-1992
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FOR MITRA-9 BRANDS LLC:

Dallas Vasquez, Founder
Mitra-9 Brands LLC
2501 Alessio Drive,
Fort Myers, Florida 33905
Ph: (330) 620-2567
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With a copy to:
Matthew R. Orr (SBN 211097)
Amin Wasserman Gurnani, LLP
515 South Flower Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 933-2330
Email: morr@awglaw.com

12. COURT APPROVAL

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

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

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

13. EXECUTION AND COUNTERPARTS

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

14. DRAFTING

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

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15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

16. ENFORCEMENT

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

17. ENTIRE AGREEMENT, AUTHORIZATION

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

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

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

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed

1 regarding the matters which are the subject of this action, to:

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

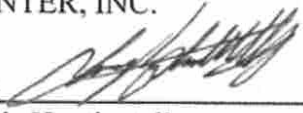
5 (2) Make the findings pursuant to California Health and Safety Code section
6 25249.7(f)(4), approve the settlement, and approve this Consent Judgment.

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

9 **IT IS SO STIPULATED:**

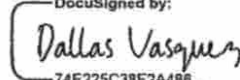
10 Dated: February 28, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

11
12 By: 
13 Chris Heptinstall
14 Executive Director

15 Dated: 2/26/2025, 2025

MITRA-9 BRANDS LLC

16 DocuSigned by:
17 
18 74E225C38E2A486
19 By: Dallas Vasquez
20 Its: CEO

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1 **APPROVED AS TO FORM:**

2
3 Dated: 2/27/, 2025
4

MICHAEL FREUND & ASSOCIATES

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

9 Dated: 2/27/2025, 2025

AMIN WASSERMAN GURNANI

10 Signed by:
11 Matt Orr
12 By: 01686CD8AC86442...
13 Matthew Orr
14 Attorney for Defendant Mitra-9 Brands
15 LLC
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[PROPOSED] ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2025

Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

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

Michael Freund, Esq.

February 8, 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:

Mitra-9 Brands LLC
Marijuana Company of America, Inc.
cDistro, Inc.
cDistro, LLC

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

1. **Mitra 9 Relax Pak Kava Extract Strawberry Watermelon - Lead**
2. **Mitra 9 Kratom Seltzer Sparkling Dragon Fruit Flavor - Lead**
3. **Mitra 9 Kratom Seltzer Sparkling Tangerine Flavor - Lead**
4. **Mitra 9 Sparkling Kandy Kava - Lead**

On February 87, 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 8, 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 Mitra-9 Brands LLC, Marijuana Company of America, Inc., cDistro, Inc., cDistro, LLC 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 Mitra-9 Brands LLC, Marijuana Company of America, Inc., cDistro, Inc., and cDistro, LLC

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 8, 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 8, 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
Mitra-9 Brands LLC
8660 College Parkway, Ste 160
Fort Myers, FL 33919

Ronald P. Russo Jr
(Registered Agent for cDistro, LLC)
3450 S Ocean Blvd, #122
Palm Beach, FL 33480

Current President or CEO
Mitra-9 Brands LLC
16810 Oriole Rd, Unit 7
Fort Myers, FL 33912

Independent Law PLLC
(Registered Agent for cDistro, Inc.)
2106 NW 4th Place
Gainesville, FL 32603

Current President or CEO
Mitra-9 Brands LLC
17051 Jean St, Ste 3
Fort Myers, FL 33967

Current President or CEO
Marijuana Company of America, Inc.
633 West 5th St, Ste 2826
Los Angeles, CA 90071

Republic Registered Agent LLC
(Registered Agent for Mitra-9 Brands LLC)
1150 NW 72nd Avenue, Suite 455
Miami, FL 33126

Registered Agents Inc
(Registered Agent for Marijuana Company of America, Inc.)
7533 S Center View Ct, Ste R
West Jordan, UT 84084

Current President or CEO
cDistro, Inc. and cDistro, LLC
3450 S Ocean Blvd, #122
Palm Beach, FL 33480

Current President or CEO
Marijuana Company of America, Inc.
1340 West Valley Parkway, Ste 205
Escondido, CA 92115

Current President or CEO
cDistro, Inc. and cDistro, LLC
17948 U.S. Hwy 19 North
Clearwater, FL 33763

Tad M Mailander
(Registered Agent for Marijuana Company of America, Inc.)
4811 49th St
San Diego, CA 92115

On February 8, 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 8, 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

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
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Fresno, CA 93721
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Thomas L. Hardy, District Attorney
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Independence, CA 93526
inyoda@inyocounty.us

Devin Chandler, Program Coordinator
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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
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Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

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

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

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

February 8, 2024

Page 6

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10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

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Prop65@sacda.org

Summer Stephan, District Attorney
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330 West Broadway
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SanDiegoDAProp65@sdca.org

Mark Ankcom, Deputy City Attorney
San Diego City Attorney
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San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
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San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Henry Lifton, Deputy City Attorney
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San Francisco, CA 94102
Prop65@sfcityatty.org

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Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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

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1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

Jeffrey S. Rosell, District Attorney
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Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney
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Jeannie.Barnes@sonoma-county.org

Phillip J. Cline, District Attorney
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Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

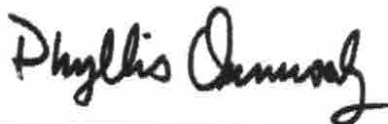
Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 8, 2024

Page 7

On February 8, 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 8, 2024, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody", written over a horizontal line.

Phyllis Dunwoody

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

February 8, 2024

Page 8

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B

Michael Freund & Associates

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

Michael Freund, Esq.

February 15, 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:

Mitra-9 Brands LLC
Marijuana Company of America, Inc.
cDistro, Inc.
cDistro, LLC

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

1. **Mitra 9 Kratom Seltzer Sparkling Black Cherry Flavor - Lead**
2. **Mitra 9 Kratom Seltzer Sparkling Tropical Flavor - Lead**
3. **Mitra 9 Sparkling Lemonade Kava - Lead**
4. **Mitra 9 Sparkling Orange Dreamsicle Kava - Lead**
5. **Mitra 9 Sparkling Strawberry Watermelon Kava - 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 15, 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 Mitra-9 Brands LLC, Marijuana Company of America, Inc., cDistro, Inc., cDistro, LLC 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 Mitra-9 Brands LLC, Marijuana Company of America, Inc., cDistro, Inc., and cDistro, LLC

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 15, 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 15, 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
Mitra-9 Brands LLC
8660 College Parkway, Ste 160
Fort Myers, FL 33919

Ronald P. Russo Jr
(Registered Agent for cDistro, LLC)
3450 S Ocean Blvd, #122
Palm Beach, FL 33480

Current President or CEO
Mitra-9 Brands LLC
16810 Oriole Rd, Suite 7
Fort Myers, FL 33912

Independent Law PLLC
(Registered Agent for cDistro, Inc.)
2106 NW 4th Place
Gainesville, FL 32603

Current President or CEO
Mitra-9 Brands LLC
17051 Jean St, Ste 3
Fort Myers, FL 33967

Current President or CEO
Marijuana Company of America, Inc.
633 West 5th St, Ste 2826
Los Angeles, CA 90071

Republic Registered Agent LLC
(Registered Agent for Mitra-9 Brands LLC)
1150 NW 72nd Avenue, Suite 455
Miami, FL 33126

Registered Agents Inc
(Registered Agent for Marijuana Company of America, Inc.)
7533 S Center View Ct, Ste R
West Jordan, UT 84084

Current President or CEO
cDistro, Inc. and cDistro, LLC
3450 S Ocean Blvd, #122
Palm Beach, FL 33480

Current President or CEO
Marijuana Company of America, Inc.
1340 West Valley Parkway, Ste 205
Escondido, CA 92115

Current President or CEO
cDistro, Inc. and cDistro, LLC
17948 U.S. Hwy 19 North
Clearwater, FL 33764

Tad M Mailander
(Registered Agent for Marijuana Company of America, Inc.)
4811 49th St
San Diego, CA 92115

On February 15, 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>:

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

February 15, 2024

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

On February 15, 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
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San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

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

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

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Devin Chandler, Program Coordinator
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Susanville, CA 96130
dchandler@co.lassen.ca.us

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consumer@marincounty.org

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Mariposa, CA 95338
mcda@mariposacounty.org

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Prop65@countyofmerced.com

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Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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Napa, CA 94559
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Clifford H. Newell, District Attorney
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Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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300 N Flower St
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Prop65notice@ocdapa.org

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 15, 2024
Page 6

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SanDiegoDAProp65@sdcca.org

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CityAttyProp65@sandiego.gov

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Alexandra.grayner@sfgov.org

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Prop65@sfcityatty.org

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edobroth@co.slo.ca.us

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daspecialops@ventura.org

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

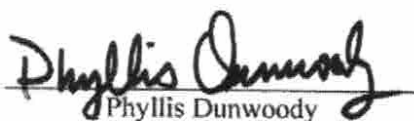
Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 15, 2024

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On February 15, 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 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 15, 2024
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Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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