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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.

**D'S NATURALS, LLC, individually and
dba NO COW AND NO COW LLC; and
DOES 1-100**

Defendants.

CASE NO. 24CV078174

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 3, 2024

Trial Date: November 21, 2025

1. INTRODUCTION

1.1 On June 3, 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 D's Naturals, LLC, individually and dba No Cow and No Cow LLC (“No Cow”) and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by No Cow 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) No Cow Protein Powder Creamy Vanilla, (2) No Cow Protein Powder Smooth Chocolate, (3) No Cow Protein Bar Cookies 'N Cream, (4) No Cow Dipped Chocolate Coconut Almond Naturally Flavored Protein Bar, (5) No Cow Dipped Protein Bar Chocolate Peanut Butter Cup Naturally Flavored, (6) No Cow Dipped Protein Bar Birthday Cake Naturally Flavored, (7) No Cow Dipped Chocolate Sprinkled Donut Naturally Flavored Protein Bar, (8) No Cow Dipped Protein Bar Frosted Gingerbread Cookie Naturally Flavored, (9) No Cow Protein Bar Chocolate Chip Cookie Dough Naturally Flavored, (10) No Cow Protein Bar Blueberry Cobbler Naturally Flavored, (11) No Cow Protein Bar Peanut Butter Chocolate Chip Naturally Flavored, (12) No Cow Protein Bar Chunky Peanut Butter Naturally Flavored, (13) No Cow Protein Bar S'Mores Naturally Flavored, (14) No Cow Dipped Chocolate Salted Caramel Naturally Flavored Protein Bar, (15) No Cow Dipped Chocolate Sea Salt Naturally Flavored Protein Bar, (16) No Cow Dipped Chocolate Mint Cookie Naturally Flavored Protein Bar, (17) No Cow Dipped Birthday Cake Naturally Flavored Protein Bar, (18) No Cow Dipped Chocolate Peanut Butter Cup Naturally Flavored Protein Bar, (19) No Cow Chocolate Fudge Brownie Naturally Flavored Protein Bar, (20) No Cow Dipped Protein Bar Key Lime Pie Naturally Flavored, (21) No Cow Protein Bar Maple, and (22) No Cow Dipped Protein Bar Sticky Cinnamon Roll.

1.2 ERC and No Cow may also hereinafter be 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 [Proposed] Stipulated Consent Judgment (“Consent Judgment”), the Parties agree that No Cow is a business entity that has employed ten or more persons at certain times relevant to this action and has been qualified as a “person in the course of doing business” within the meaning of Proposition 65. D’s Naturals, LLC represents and affirms that it is a going concern, that it is the sole entity that does business as No Cow or No Cow LLC with respect to the Covered Products, and that it manufactures, distributes, and/or sells the Covered Products for sale to consumers in California. D’s Naturals, LLC further represents and affirms that any successors or assigns that manufacture, distribute, and/or sell the Covered Products on or after the Effective Date shall be bound by the injunctive relief terms of this Consent Judgment. D’s Naturals, LLC further represents and affirms that if DGK Holdings or any other entity (“Related Entity”) now has, or in the future obtains, a partial or full controlling interest in D’s Naturals, LLC and/or the brands “No Cow” and/or “No Cow LLC,” then D’s Naturals, LLC shall obtain an agreement, in writing, with such Related Entity confirming that such Related Entity shall be obligated to comply with the injunctive relief terms of this Consent Judgment as if it were, itself, referenced herein as No Cow and that if such Related Entity fails to so comply, it will not be entitled to any release as provided in Section 8 of this Consent Judgment.

1.5 The Complaint is based on allegations contained in ERC’s Notices of Violation dated February 23, 2024, March 1, 2024, and March 21, 2024 that were served on the California Attorney General, other public enforcers, and No Cow (“Notices”). True and correct copies of the 60-Day Notices dated February 23, 2024, March 1, 2024, and March 21, 2024 are attached hereto as **Exhibits A, B, and C** 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 No Cow and no designated governmental entity has filed a Complaint against No Cow 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 No Cow, which is in violation of California Health and Safety Code section 25249.6. No Cow denies 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. Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed as an admission by any of the Parties or by any of their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or violation of law.

1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties 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; however, if the Consent Judgment is entered as a Judgment by this Court before September 25, 2025, the Effective Date shall be October 6, 2025.

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 No Cow 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 Effective 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 Effective Date, No Cow 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

1 warning requirements under Section 3.2.


2 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
3 of California” shall mean to directly ship a Covered Product into California for sale in
4 California or to sell a Covered Product to a distributor that No Cow knows or has reason to
5 know will sell the Covered Product in California.

6 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
7 Level” shall be measured in micrograms, and shall be calculated using the following formula:
8 micrograms of lead per gram of product, multiplied by grams of product per serving of the
9 product (using the largest serving size appearing on the product label), multiplied by servings
10 of the product per day (using the largest number of recommended daily servings appearing on
11 the label), which equals micrograms of lead exposure per day. If the label contains no
12 recommended daily servings, then the number of recommended daily servings shall be one.

13 **3.2 Clear and Reasonable Warnings**

14 If No Cow is required to provide a warning pursuant to Section 3.1, one of the following
15 warnings must be utilized (“Warning”):

16 **OPTION 1:**

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


20 *Or*

21 **OPTION 2:**

22  **WARNING:** [Cancer and] Reproductive harm – www.P65Warnings.ca.gov

23 *Or*


24 **OPTION 3:**

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

27 *Or*

28 ///

OPTION 4:

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

For all Options, the Warning shall begin either with the word “**WARNING,**” as indicated above, or the word(s) “**CA WARNING**” or “**CALIFORNIA WARNING,**” in all capital letters and bold print. No Cow shall use the phrase “cancer and” in the Option 1, Option 2, and Option 3 Warnings or “carcinogen and” in the Option 4 Warning (each phrase referred to individually as a “Cancer Phrase”) if No Cow 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 No Cow 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 Option 2 Warning may only be used until January 1, 2028. Any Covered 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.

The Warning shall be securely affixed to or printed upon the label of each Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall appear on the Covered Product’s primary product display page or on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. 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

1 prominently displayed if the purchaser has to search for it in the general content of the website. If
2 the Warning is provided on the checkout page, an asterisk or other identifying method must be
3 utilized to identify which products on the checkout page are subject to the Warning.

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

10 No Cow must display the above Warning with such conspicuousness, as compared with
11 other words, statements or designs on the label, or on its website, if applicable, to render the
12 Warning likely to be read and understood by an ordinary individual under customary conditions
13 of purchase or use of the product. Where a sign or label used to provide the Warning for a
14 Covered Product includes consumer information about the Covered Product in a language other
15 than English, the Warning must also be provided in that language in addition to English.

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

19 **3.3 Conforming Covered Products**

20 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
21 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure
22 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
23 3.4, and that is not known by No Cow to contain other chemicals that violate Proposition 65’s safe
24 harbor thresholds.

25 **3.4 Testing and Quality Control Methodology**

26 **3.4.1** Beginning within one year of the Effective Date, No Cow shall arrange
27 for lead testing of the Covered Products at least once a year for a minimum of three
28 consecutive years by arranging for testing of three (3) randomly selected samples of each of

1 the Covered Products, in the form intended for sale to the end-user, which No Cow intends to
2 sell or is manufacturing for sale in California, directly selling to a consumer in California or
3 “Distributing into the State of California” (the “Original Testing”).

4 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
5 lead detection result of the three (3) randomly selected samples of the Covered Products will
6 be controlling. If, during a required testing year, the highest result for a Covered Product
7 pursuant to the Original Testing as described in Section 3.4.1 reflects an exposure for lead in
8 excess of the threshold specified in Section 3.1, No Cow shall have the right to retest three (3)
9 randomly selected samples from different lots (“Retest”), and the highest lead detection result
10 from the three samples tested during the Retest shall be used as controlling for calculating the
11 Daily Lead Exposure Level for that Covered Product for purposes of the Consent Judgment. If
12 No Cow chooses to conduct a Retest, then it shall provide the tests from the Original Testing
13 and the Retest to ERC in response to any request pursuant to Section 3.4.7 or Section 6.2.
14 Additionally, if No Cow chooses to conduct a Retest, it shall comply with Sections 3.1 and 3.2
15 with respect to any lot from which the Original Testing sample that exceeded the threshold
16 specified in Section 3.1 was obtained. This means that if any sample tested in the Original
17 Testing had a Daily Lead Exposure Level greater than 0.5 micrograms of lead per day, as
18 determined by the exposure methodology set forth in Section 3.1.2, then No Cow must comply
19 with Sections 3.1 and 3.2 before selling or distributing Covered Products from that sample’s lot
20 to California consumers. No Cow shall not be permitted to conduct a Retest on a Covered
21 Product for any year in which more than one sample from the Original Testing reflects
22 exposures in excess of the threshold specified in Section 3.1. No Cow shall be permitted one
23 Retest per Covered Product for lead, as outlined in this Section, during each year that it
24 performs testing. If any sample in the Retest reflects an exposure in excess of the threshold
25 specified in Section 3.1, No Cow shall comply with Sections 3.1 and 3.2 as to that Covered
26 Product.

27 **3.4.3** For purposes of measuring the “Daily Lead Exposure Level,” the highest
28 lead detection result of the three (3) randomly selected samples of the Covered Products will

1 be controlling.

2 **3.4.4** All testing pursuant to this Consent Judgment shall be performed using a
3 laboratory method that complies with the performance and quality control factors appropriate
4 for the method used, including limit of detection and limit of quantification, sensitivity,
5 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
6 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
7 mg/kg.

8 **3.4.5** All testing pursuant to this Consent Judgment shall be performed by an
9 independent third party laboratory certified by the California Environmental Laboratory
10 Accreditation Program or an independent third-party laboratory that is registered with the
11 United States Food & Drug Administration.

12 **3.4.6** Nothing in this Consent Judgment shall limit No Cow’s ability to
13 conduct, or require that others conduct, additional testing of the Covered Products, including
14 the raw materials used in their manufacture.

15 **3.4.7** Within thirty (30) days of ERC’s written request, No Cow shall deliver
16 lab reports obtained pursuant to Section 3.4 to ERC. No Cow shall retain all test results and
17 documentation for a period of three years from the date of each test.

18 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
19 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
20 testing meets the requirements of Sections 3.4.4 and 3.4.5. Nothing in Section 3.4 of this Consent
21 Judgment is intended by either party to set a precedent for the level of lead or other chemicals
22 that is permissible in consumer products under Proposition 65.

23 **3.6** The requirements imposed by Sections 3.1 through 3.5 of this Consent Judgment
24 shall be in effect only during time periods in which No Cow employs ten or more persons. When
25 considering whether a person is employed by or an “employee” of No Cow, the Parties shall base
26 such determination on the definition of the term “employee” under California Code of
27 Regulations, tit. 27, § 25102, subd. (h) (2025).

28 **3.6.1** If No Cow contends that the requirements of Sections 3.1 through 3.5 of

1 this Consent Judgment are not in effect because No Cow does not employ ten or more persons,
2 No Cow must provide ERC a written declaration stating that No Cow employs fewer than ten
3 persons. As set forth in Section 3.6, when considering whether a person is employed by or an
4 “employee” of No Cow for the purpose of the written declaration, No Cow shall base such
5 determination on the definition of the term “employee” under California Code of Regulations, tit.
6 27, § 25102, subd. (h) (2025), which reads, in part: “‘Employee’ shall have the same meaning as
7 it does in Unemployment Insurance Code Section 621 and in Labor Code Section 3351.
8 Generally, and without limiting the applicability of the definitions in these two statutes, this
9 means that an employee is a person who performs services for remuneration under any
10 appointment or contract of hire or apprenticeship, express or implied, oral or written, whether
11 lawfully or unlawfully employed.” Further, the written declaration shall expressly state that the
12 determination of the number of persons employed was based on a strict interpretation of the
13 definition of the term “employee” referenced herein. In accordance with such strict
14 interpretation, if No Cow engages the services of independent contractors or non-employees to
15 routinely perform work that would otherwise be performed by employees, No Cow’s
16 determination of the number of its employees for the purposes of the declaration shall include
17 such persons. The written declaration must be provided to ERC within thirty (30) days of No
18 Cow invoking relief under this Section 3.6.

19 **3.6.2** In addition to providing the written declaration required by Section 3.6.1,
20 No Cow shall take the following actions: (a) provide ERC with a copies of the United States
21 Internal Revenue Service (IRS) Form 941 (“Form 941”) for the quarter during which No Cow
22 provides the written declaration and the immediately preceding quarter; and (b) provide ERC
23 with copies of Form 941s either: (i) for the four calendar quarters following the quarter during
24 which the written declaration was provided pursuant to Section 3.6.1, or (ii) for each quarter until
25 No Cow employs ten or more people, whichever comes first. No Cow shall provide each Form
26 941 referenced in this Section 3.6.2 to ERC within forty-five (45) days from the date it is
27 provided to the IRS.

28 **3.6.3** If the number of people employed by No Cow increases to ten or more at

any time after the date that No Cow notifies ERC that the number of its employees was less than ten, No Cow shall send ERC a written notification that the number of No Cow's employees has increased to ten or more within ninety (90) days after the date that the number of No Cow's employees increases to ten or more.

3.6.4 The notice requirement in Section 3.6.3. shall not apply in the event that No Cow employs ten or more people for a period of less than sixty (60) days.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorneys' fees, and costs, No Cow shall make a total payment of \$300,000.00 ("Total Settlement Amount") to ERC in five periodic payments (the "Periodic Payments") according to the following payment schedule ("Due Dates"):

- Payment 1 -- \$65,000.00 within 10 days of the Effective Date (the first Due Date)
- Payment 2 -- \$65,000.00 within 40 days of the Effective Date (the second Due Date)
- Payment 3 -- \$65,000.00 within 70 days of the Effective Date (the third Due Date)
- Payment 4 -- \$65,000.00 within 100 days of the Effective Date (the fourth Due Date)
- Payment 5 -- \$40,000.00 within 130 days of the Effective Date (the fifth Due Date)

No Cow shall make these Periodic Payments by wire transfer to ERC's account, for which ERC will give No Cow the necessary account information. If the ERC does not provide No Cow with the necessary account information prior to the Effective Date, then the Due Dates referenced in this section shall run from the date No Cow receives the necessary account information rather than the Effective Date. The Total Settlement Amount shall be apportioned as follows:

4.2 \$45,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$33,750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$11,250.00) of the civil penalty.

1 **4.3** \$39,747.85 shall be distributed to ERC as reimbursement to ERC for reasonable
2 costs incurred in bringing this action.

3 **4.4** \$28,220.41 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 harm as allegedly caused by Defendant 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 dietary supplement products in California. ERC’s
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 dietary supplements and/or by providing clear and reasonable warnings
12 to California consumers prior to ingestion of the products.

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

1 for lead in dietary supplement products (Products submitted to the program are screened for
2 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
3 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
4 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 days of any request, copies of
9 documentation demonstrating how such funds have been spent.

10 **4.5** \$187,031.74 shall be distributed to ERC for its in-house legal fees. Except as
11 explicitly provided herein, each Party shall bear its own fees and costs.

12 **4.6** In the event that No Cow fails to remit, in full, any of the Periodic Payments
13 owed under Section 4.1 of this Consent Judgment on or before the applicable Due Date, No
14 Cow shall be deemed to be in material breach of its obligations under this Consent Judgment.
15 ERC shall provide written notice of the delinquency to No Cow via electronic mail. If No Cow
16 fails to deliver the delinquent payment(s) within five (5) business days from the written notice,
17 the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall
18 be immediately due and owing and shall accrue interest at the statutory judgment interest rate
19 provided in the California Code of Civil Procedure section 685.010, and No Cow shall forfeit
20 any release provisions in Section 8 that are for the benefit of No Cow and/or the Released
21 Parties (as defined in Section 8.1) until such time as the Total Settlement Amount is paid in
22 full. Additionally, No Cow agrees to pay ERC's reasonable attorneys' fees and costs for any
23 efforts to collect any payment(s) due under this Consent Judgment.

24 **5. MODIFICATION OF CONSENT JUDGMENT**

25 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
26 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
27 or (ii) by motion of either Party pursuant to Section 5.3 and the agreement of the Parties and
28 upon entry by the Court of a modified consent judgment.

1 **5.2** If either Party seeks to modify this Consent Judgment under Section 5.1, then
2 the requesting Party must provide written notice to the non-requesting Party of its intent
3 (“Notice of Intent”). If the non-requesting Party seeks to meet and confer regarding the
4 proposed modification in the Notice of Intent, then the non-requesting Party must provide
5 written notice to the requesting Party within thirty (30) days of receiving the Notice of Intent.
6 If the non-requesting Party notifies the requesting Party in a timely manner of its intent to meet
7 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
8 Parties shall meet in person, via remote meeting, or by telephone within thirty (30) days of the
9 non-requesting Party’s notification of its intent to meet and confer. Within thirty (30) days of
10 such meeting, if the non-requesting Party disputes the proposed modification, it shall provide
11 to the requesting Party a written basis for its position. The Parties shall continue to meet and
12 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
13 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
14 confer period.

15 **5.3** In the event that No Cow 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, No Cow 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 terminate
23 this Consent Judgment.

24 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
25 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
26 inform No Cow in a reasonably prompt manner of its test results, including information
27 sufficient to permit No Cow to identify the Covered Products at issue. No Cow shall, within
28 sixty (60) 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, demonstrating No Cow'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 No Cow and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of No Cow), 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 to and including 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 (i) the failure to provide Proposition 65 warnings on the Covered Products up to and including the Effective Date and (ii) any and all claims asserted by ERC against No Cow or the Released Parties for No Cow's alleged violation of its obligations set

1 forth in the Consent Judgment entered on December 23, 2021, in Alameda County Superior
2 Court Case No. RG20072011, *Environmental Research Center v. D's Natural LLC et al*, for
3 the period from December 23, 2021 up to and including the Effective Date.

4 **8.3** ERC on its own behalf only, and No Cow on its own behalf only, further waive
5 and release any and all claims they may have against each other for all actions or statements
6 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
7 connection with the Notices and Complaint up to and including the Effective Date, provided,
8 however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the
9 terms of this Consent Judgment.

10 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC on behalf of itself only, and No Cow on behalf of itself only, acknowledge
13 that this Consent Judgment is expressly intended to cover and include all such claims up to and
14 including the Effective Date, including all rights of action therefore. ERC and No Cow
15 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown
16 claims and nevertheless waive California Civil Code section 1542 as to any such unknown
17 claims. California Civil Code section 1542 reads as follows:

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

22 ERC on behalf of itself only, and No Cow on behalf of itself only, acknowledge and
23 understand the significance and consequences of this specific waiver of California Civil Code
24 section 1542.

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

28 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or

environmental exposures arising under Proposition 65, nor shall it apply to any of No Cow's products other than the Covered Products.

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 and electronic mail. 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:

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

**FOR D'S NATURALS, LLC, individually and dba
NO COW and NO COW LLC:**

Barbara Yehling
Chief Executive Officer
191 University Blvd, Suite 672
Denver, CO 80206
Email: byehling@nocow.com

///

1 With a copy to:
2 William F. Tarantino
3 Cedar H. Hobbs
4 Morrison & Foerster LLP
5 425 Market Street
6 San Francisco, CA 94105
7 Ph: (415) 268-7000
8 Email: wtarantino@mofo.com
9 chobbs@mofo.com

10 **12. COURT APPROVAL**

11 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
12 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
13 Consent Judgment.

14 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
15 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
16 prior to the hearing on the motion.

17 **12.3** If this Consent Judgment is not approved by the Court, it shall be void and have
18 no force or effect.

19 **13. EXECUTION AND COUNTERPARTS**

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

23 **14. DRAFTING**

24 The terms of this Consent Judgment have been reviewed by the respective counsel for
25 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
26 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
27 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
28 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.

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, ERC shall not be limited to enforcement of this Consent
14 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
15 provided by law for failure to comply with Proposition 65 or other laws.

16 **17. ENTIRE AGREEMENT, AUTHORIZATION**

17 **17.1** This Consent Judgment contains the sole and entire agreement and
18 understanding of the Parties with respect to the entire subject matter herein, including any and
19 all prior discussions, negotiations, commitments, and understandings related thereto. No
20 representations, oral or otherwise, express or implied, other than those contained herein have
21 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
22 herein, shall be deemed to exist or to bind any Party.

23 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

27 This Consent Judgment has come before the Court upon the request of the Parties. The
28 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: 5/6/, 2025

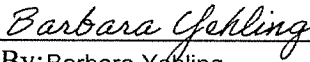
ENVIRONMENTAL RESEARCH
CENTER, INC.

11
12 By: 

13 Chris Heptinstall, Executive Director

14 Dated: May 5, 2025

D'S NATURALS, LLC, individually and
dba NO COW and NO COW LLC

15
16 

17 By: Barbara Yehling

18 Its: CEO

19 ///

20 ///

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1 **APPROVED AS TO FORM:**

2
3 Dated: May 5, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: 

6 Charles W. Poss
7 In-House Counsel

8 Dated: May 2, 2025

MORRISON & FOERSTER LLP

9
10 By: 

11 William F. Tarantino
12 Cedar H. Hobbs
13 Attorneys for D's Naturals, LLC,
14 individually and dba No Cow and No
15 Cow LLC
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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court

EXHIBIT A



Environmental Research Center

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

February 23, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

D's Naturals, LLC individually and dba No Cow and No Cow 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. No Cow Protein Powder Creamy Vanilla - Lead**
- 2. No Cow Protein Powder Smooth Chocolate - Lead**

3. **No Cow Protein Bar Cookies 'N Cream – Lead**
4. **No Cow Dipped Chocolate Coconut Almond Naturally Flavored Protein Bar - Lead**
5. **No Cow Dipped Protein Bar Chocolate Peanut Butter Cup Naturally Flavored - Lead**
6. **No Cow Dipped Protein Bar Birthday Cake Naturally Flavored - Lead**
7. **No Cow Dipped Chocolate Sprinkled Donut Naturally Flavored Protein Bar - Lead**
8. **No Cow Dipped Protein Bar Frosted Gingerbread Cookie Naturally Flavored - Lead**
9. **No Cow Protein Bar Chocolate Chip Cookie Dough Naturally Flavored - Lead**
10. **No Cow Protein Bar Blueberry Cobbler Naturally Flavored - Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 23, 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 Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

February 23, 2024

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

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to D's Naturals, LLC individually and dba No Cow and No Cow 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 D's Naturals, LLC individually and dba No Cow and No Cow LLC

I, Charles Poss, declare:

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

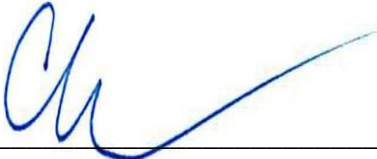
2. I am an attorney for the noticing party.

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

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

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

Dated: February 23, 2024



Charles Poss

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On February 23, 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
D's Naturals, LLC individually and dba No Cow
and No Cow LLC
3370 Walnut Street
Denver, CO 80205

Daniel Katz
(Registered Agent for D's Naturals, LLC individually
and dba No Cow and No Cow LLC)
3370 Walnut Street
Denver, CO 80205

CT Corporation System
(Registered Agent for D's Naturals, LLC individually
and dba No Cow and No Cow LLC)
4400 Easton Commons, Suite 125
Columbus, OH 43219

On February 23, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On February 23, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

February 23, 2024

Page 6

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@sdcdca.org

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

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

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

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

February 23, 2024

Page 7

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

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

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

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

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

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

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

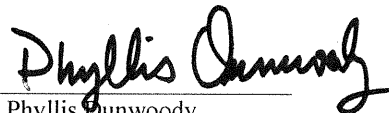
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On February 23, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on February 23, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
Markleeville, CA 96120

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



Environmental Research Center

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

March 1, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

D's Naturals, LLC individually and dba No Cow and No Cow 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. No Cow Protein Bar Peanut Butter Chocolate Chip Naturally Flavored - Lead

2. **No Cow Protein Bar Chunky Peanut Butter Naturally Flavored – Lead**
3. **No Cow Protein Bar S'Mores Naturally Flavored - Lead**
4. **No Cow Dipped Chocolate Salted Caramel Naturally Flavored Protein Bar - Lead**
5. **No Cow Dipped Chocolate Sea Salt Naturally Flavored Protein Bar - Lead**
6. **No Cow Dipped Chocolate Mint Cookie Naturally Flavored Protein Bar - Lead**
7. **No Cow Dipped Birthday Cake Naturally Flavored Protein Bar - Lead**
8. **No Cow Dipped Chocolate Peanut Butter Cup Naturally Flavored Protein Bar - Lead**
9. **No Cow Chocolate Fudge Brownie Naturally Flavored Protein Bar - 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 March 1, 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 Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

March 1, 2024

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

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to D's Naturals, LLC individually and dba No Cow and No Cow 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 D's Naturals, LLC individually and dba No Cow and No Cow LLC

I, Charles Poss, declare:

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

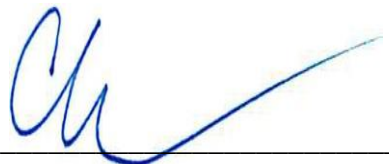
2. I am an attorney for the noticing party.

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

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

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

Dated: March 1, 2024



Charles Poss

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On March 1, 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
D's Naturals, LLC individually and dba No Cow
and No Cow LLC
3370 Walnut Street
Denver, CO 80205

Daniel Katz
(Registered Agent for D's Naturals, LLC individually
and dba No Cow and No Cow LLC)
3370 Walnut Street
Denver, CO 80205

CT Corporation System
(Registered Agent for D's Naturals, LLC individually
and dba No Cow and No Cow LLC)
4400 Easton Commons, Suite 125
Columbus, OH 43219

On March 1, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On March 1, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

March 1, 2024

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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@sdcdca.org

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

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

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

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

March 1, 2024

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

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

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

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

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

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

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

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

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

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

On March 1, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on March 1, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 1, 2024

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Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
Markleeville, CA 96120

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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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.

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DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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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 C



Environmental Research Center

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

March 21, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the In-House Counsel for Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

D's Naturals, LLC individually and dba No Cow and No Cow 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. No Cow Dipped Protein Bar Key Lime Pie Naturally Flavored - Lead**
- 2. No Cow Protein Bar Maple - Lead**

3. No Cow Dipped Protein Bar Sticky Cinnamon Roll - 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 March 21, 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 Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

March 21, 2024

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

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to D's Naturals, LLC individually and dba No Cow and No Cow 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 D's Naturals, LLC individually and dba No Cow and No Cow LLC

I, Charles Poss, declare:

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

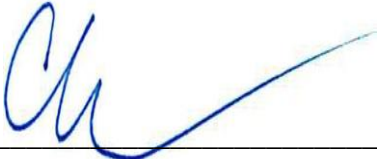
2. I am an attorney for the noticing party.

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

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

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

Dated: March 21, 2024



Charles Poss

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On March 21, 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
D's Naturals, LLC individually and dba No Cow
and No Cow LLC
3370 Walnut Street
Denver, CO 80205

Daniel Katz
(Registered Agent for D's Naturals, LLC individually
and dba No Cow and No Cow LLC)
3370 Walnut Street
Denver, CO 80205

CT Corporation System
(Registered Agent for D's Naturals, LLC individually
and dba No Cow and No Cow LLC)
4400 Easton Commons, Suite 125
Columbus, OH 43219

On March 21, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On March 21, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

March 21, 2024

Page 6

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
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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
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550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
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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
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201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney
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Santa Ana, CA 92703
Prop65notice@ocdapa.org

Morgan Briggs Gire, District Attorney
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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
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
San Diego County
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San Diego, CA 92101
SanDiegoDAProp65@sdcdca.org

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

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

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

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

March 21, 2024

Page 7

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

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

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

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

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

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

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

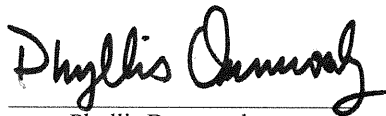
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On March 21, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:
NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;
CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on March 21, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

March 21, 2024

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Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
Markleeville, CA 96120

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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