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15 Happy Mammoth

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

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

21 **Plaintiff,**

22 **vs.**

23 **HAPPY KOALA LLC, individually and dba**  
24 **HAPPY MAMMOTH; and DOES 1-100**

25 **Defendants.**

26 **CASE NO. 24CV098310**

27 **[PROPOSED] AMENDED**  
28 **STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 4, 2024  
Trial Date: None set

1 **1. INTRODUCTION**

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

1 Mammoth”) and Does 1-100. In this action, ERC alleges that a number of products  
2 manufactured, distributed, or sold by Happy Mammoth contain lead and/or mercury and/or  
3 perfluorooctanoic acid (PFOA), chemicals listed under Proposition 65 as carcinogens and/or  
4 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition  
5 65 warning. These products (referred to hereinafter individually as a “Covered Product” or  
6 collectively as “Covered Products”) are: (1) Happy Mammoth NewSlim Complete Protein  
7 Meal Vanilla Bean (lead, mercury, PFOA), and (2) Happy Mammoth FitSlim SuperGreens  
8 Vanilla Bean (lead, PFOA).

9 The product “Happy Mammoth NewSlim Complete Protein Meal Vanilla Bean” is also  
10 referred to individually as “Mercury Covered Product.”

11 **1.2** ERC and Happy Mammoth are hereinafter referred to individually as a “Party”  
12 or collectively as the “Parties.”

13 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
16 and encouraging corporate responsibility.

17 **1.4** For purposes of this Amended Stipulated Consent Judgment (“Consent  
18 Judgment”), the Parties agree that Happy Mammoth is a business entity that has employed ten or  
19 more persons at all times relevant to this action and qualifies as a “person in the course of doing  
20 business” within the meaning of Proposition 65. Happy Mammoth manufactures, distributes,  
21 and/or sells the Covered Products.

22 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
23 dated July 12, 2024 and July 26, 2024 that were served on the California Attorney General,  
24 other public enforcers, and Happy Mammoth (“Notices”). True and correct copies of the 60-  
25 Day Notices dated July 12, 2024 and July 26, 2024 are attached hereto as **Exhibits A and B**  
26 and each is incorporated herein by reference. More than 60 days have passed since the Notices  
27 were served on the Attorney General, public enforcers, and Happy Mammoth and no  
28 designated governmental entity has filed a Complaint against Happy Mammoth with regard to

1 the Covered Products or the alleged violations.

2           **1.6**     ERC’s Notices and Complaint allege that use of the Covered Products by  
3 California consumers exposes them to lead and PFOA, in addition to mercury from the  
4 Mercury Covered Product, without first receiving clear and reasonable warnings from Happy  
5 Mammoth, which is in violation of California Health and Safety Code section 25249.6. Happy  
6 Mammoth denies all material allegations contained in the Notices and Complaint.

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

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

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

19           **2.     JURISDICTION AND VENUE**

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

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

28           **3.1**     Beginning on the Effective Date, Happy Mammoth shall be permanently

1 enjoined from manufacturing for sale in the State of California, “Distributing into the State of  
2 California,” or directly selling in the State of California, any Covered Product that exposes a  
3 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or,  
4 with respect to the Mercury Covered Product, a “Daily Mercury Exposure Level” of more than  
5 0.3 micrograms of mercury per day and/or any detectible level of PFOA unless it meets the  
6 warning requirements under Section 3.2.

7 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
8 of California” shall mean to directly ship a Covered Product into California for sale in  
9 California or to sell a Covered Product to a distributor that Happy Mammoth knows will sell  
10 the Covered Product in California.

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

18 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure  
19 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
20 micrograms of mercury per gram of product, multiplied by grams of product per serving of the  
21 product (using the largest serving size appearing on the product label), multiplied by servings  
22 of the product per day (using the largest number of recommended daily servings appearing on  
23 the label), which equals micrograms of mercury exposure per day. If the label contains no  
24 recommended daily servings, then the number of recommended daily servings shall be one.

25 **3.1.4** So long as Happy Mammoth can provide documentation, if requested in  
26 writing by ERC, Covered Products shipped, sold, or Distributed into the State of California by  
27 Happy Mammoth prior to the Effective Date are not bound by the injunctive terms set forth in  
28 this Section 3, including but not limited to the Daily Lead Exposure Level, Daily Mercury

1 Exposure Level, and warning and testing requirements, and are instead permitted to be sold as is  
2 to California Consumers and are expressly released by Section 8 of this Consent Judgment.

### 3 **3.2 Clear and Reasonable Warnings**

4 If Happy Mammoth is required to provide a warning pursuant to Section 3.1, one of the  
5 following warnings must be utilized (“Warning”):

#### 6 **OPTION 1:**

7 **WARNING:** Consuming this product can expose you to chemicals including [lead] [and]  
8 [mercury] [and] [perfluorooctanoic acid] which is [are] known to the State of California to  
9 cause [cancer and] birth defects or other reproductive harm. For more information go to  
10 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

11 OR

#### 12 **OPTION 2:**

13  **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

14 Happy Mammoth shall use the phrase “cancer and” in the Warning if Happy Mammoth  
15 has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of  
16 lead and/or if PFOA is present as determined pursuant to the quality control methodology set  
17 forth in Section 3.4 or if Happy Mammoth has reason to believe that another Proposition 65  
18 chemical is present which may require a cancer warning. For the Option 1 Warning, as  
19 identified in the brackets, the Warning shall reflect at least one chemical present in each of the  
20 Covered Products, but if there is a chemical present at a level that requires a cancer warning,  
21 the chemical requiring use of the phrase “cancer and” in the Warning shall always be  
22 identified. For the Option 2 Warning, the entire Warning must be in a type size no smaller  
23 than the largest type size used for other consumer information on the product. In no case shall  
24 the Warning appear in a type size smaller than 6-point type. Additionally, for the Option 2  
25 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with  
26 a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller  
27 than the height of the word “**WARNING.**” Where the label for the product is not printed using  
28 the color yellow, the symbol may be printed in black and white.

1           The Warning shall be provided through one of the following methods: (1) a product-  
2 specific warning provided on a posted sign, shelf tag, or shelf sign, for the Covered Product at  
3 each point of display of the product; or (2) a product-specific warning provided via any  
4 electronic device or process that automatically provides the warning to the purchaser prior to or  
5 during the purchase of the Covered Product at brick-and-mortar locations, without requiring  
6 the purchaser to seek out the warning; or (3) a warning on the label that is securely affixed to  
7 or printed upon the label and complies with this Section 3.2. If the Warning is printed upon the  
8 label of the Covered Product, it must be set off from other surrounding information and  
9 enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning  
10 shall appear prior to check-out on the Covered Product’s primary display page, or as a pop-up  
11 when a California zip code is input into the shipping instructions, or on the checkout page  
12 when a California delivery address is indicated for any purchase of any Covered Product.  
13 Where a Warning subject to this section is provided solely on the checkout page, an asterisk or  
14 other identifying method must be utilized to identify which products on the checkout page are  
15 subject to the Warning. The Warning may be provided with a conspicuous hyperlink stating  
16 “**WARNING**” in all capital and bold letters so long as the hyperlink goes directly to a page  
17 prominently displaying the Warning without content that detracts from the Warning.

18           If a Covered Product is being sold by an online third-party seller or downstream reseller  
19 customer (collectively referred to as “Third-Party Seller(s)”), who are subject to Proposition 65  
20 and known to and authorized to sell such Covered Product by Happy Mammoth, and Happy  
21 Mammoth cannot itself post the warning on the authorized Third-Party Seller’s website  
22 because Happy Mammoth lacks control over such authorized Third-Party Seller’s website, then  
23 Happy Mammoth must notify the authorized Third-Party Seller and/or its authorized agent, in  
24 writing, of the authorized Third-Party Seller’s duty to provide an internet warning as part of the  
25 condition of sale of the Covered Product. Happy Mammoth shall comply with this obligation  
26 to notify authorized Third-Party Sellers by complying with 27 C.C.R. § 25600.2 (2024)  
27 including, but not limited to, by providing the information required by 27 C.C.R. § 25600.2  
28 (2024), including labels, labeling, shelf signs, or tags bearing the Warning, and all other

1 necessary warning materials, to any such authorized Third-Party Seller (or its authorized  
2 agent). The written notice required by this Section shall instruct the Third-Party Seller that the  
3 labels, labeling, shelf signs, or tags bearing the Warning must be displayed on or in proximity  
4 to the Covered Products with such conspicuousness, as compared with other words, statements  
5 or designs as to render the Warning likely to be seen, read, and understood by an ordinary  
6 individual prior to sale. Confirmation of receipt of the written notice and any renewed written  
7 notices must be received electronically or in writing from the Third Party Seller, or its  
8 authorized agent, to which the manufacturer, producer, packager, importer, supplier, or  
9 distributor of the product sent the written notice.

10 The Warning shall be at least the same size as the largest of any other health or safety  
11 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in  
12 all capital letters and in bold print. No statements intended to or likely to have the effect of  
13 diminishing the impact of the Warning on the average lay person shall accompany the  
14 Warning. Further no statements may accompany the Warning that state or imply that the source  
15 of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

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

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

25 If subsequently enacted changes to Proposition 65 or its implementing regulations require  
26 the use of additional or different information on any warning specifically applicable to the  
27 Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor  
28 warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this

1 Section.

2 **3.3 Conforming Covered Products**

3 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
4 Level” is no greater than 0.5 micrograms of lead per day and, with respect to the Mercury  
5 Covered Product, the “Daily Mercury Exposure Level” is no greater than 0.3 micrograms of  
6 mercury per day and/or there is no detectible level of PFOA as determined by the exposure  
7 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
8 3.4, and that is not known by Happy Mammoth to contain other chemicals that violate Proposition  
9 65’s safe harbor thresholds.

10 **3.4 Testing and Quality Control Methodology**

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

23 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the  
24 and/or the “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result  
25 of the three (3) randomly selected samples of the Covered Products will be controlling.

26 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
27 laboratory method that complies with the performance and quality control factors appropriate  
28 for the method used, including limit of detection and limit of quantification, sensitivity,



1 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
2 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
3 mg/kg for lead and mercury and 0.025 ng/g for PFOA.

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

8 **3.4.5** Nothing in this Consent Judgment shall limit Happy Mammoth’s ability  
9 to conduct, or require that others conduct, additional testing of the Covered Products, including  
10 the raw materials used in their manufacture.

11 **3.4.6** Within thirty (30) days of ERC’s written request, which request shall not  
12 be made more than once per year, Happy Mammoth shall deliver lab reports obtained pursuant  
13 to Section 3.4 to ERC. Happy Mammoth shall retain all test results and documentation for a  
14 period of five years from the date of each test.

15 **3.5** The testing and reporting requirements of Section 3.4 do not apply to any  
16 Covered Product for which Happy Mammoth is providing a Warning, continuously and without  
17 interruption from the Effective Date, pursuant to Section 3.2 of this Consent Judgment. In the  
18 event a Warning is provided after the Effective Date but Happy Mammoth thereafter ceases to  
19 provide the Warning, the testing and reporting requirements of Section 3.4 of this Consent  
20 Judgment shall apply immediately after the date the Warning ceases to be provided, unless  
21 Happy Mammoth can show to the satisfaction of ERC that the cessation in providing the  
22 Warning was a temporary error that was resolved when discovered.

23 **3.6** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC  
24 from obtaining and relying upon its own testing for purposes of enforcement, so long as such  
25 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this  
26 Consent Judgment is intended by either party to set a precedent for the level of lead, mercury,  
27 PFOA or other chemicals that is permissible in consumer products under Proposition 65.

28 ///

1     **4. SETTLEMENT PAYMENT**

2             **4.1**     In full satisfaction of all potential civil penalties, additional settlement payments,  
3 attorney’s fees, and costs, Happy Mammoth shall make a total payment of \$55,000.00 (“Total  
4 Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). Happy  
5 Mammoth shall make this payment by wire transfer to ERC’s account, for which ERC will give  
6 Happy Mammoth the necessary account information. The Total Settlement Amount shall be  
7 apportioned as follows:

8             **4.2**     \$8,000.00 shall be considered a civil penalty pursuant to California Health and  
9 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,000.00) of the civil penalty to the  
10 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
11 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
12 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,000.00) of the civil penalty.

13             **4.3**     \$5,899.42 shall be distributed to ERC as reimbursement to ERC for reasonable  
14 costs incurred in bringing this action.

15             **4.4**     \$5,569.55 shall be distributed to ERC as an Additional Settlement Payment  
16 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to  
17 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities  
18 that address the same public harm as allegedly caused by Defendant in this matter. These  
19 activities are detailed below and support ERC’s overarching goal of reducing and/or  
20 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s  
21 activities have had, and will continue to have, a direct and primary effect within the State of  
22 California because California consumers will be benefitted by the reduction and/or elimination  
23 of exposure to lead and/or mercury and/or PFOA in dietary supplements and/or by providing  
24 clear and reasonable warnings to California consumers prior to ingestion of the products.

25             Based on a review of past years’ actual budgets, ERC is providing the following list of  
26 activities ERC engages in to protect California consumers through Proposition 65 citizen  
27 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
28 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing

1 dietary supplement products that may contain lead and/or mercury and/or PFOA and are sold  
2 to California consumers. This work includes continued monitoring and enforcement of past  
3 consent judgments and settlements to ensure companies are in compliance with their  
4 obligations thereunder, with a specific focus on those judgments and settlements concerning  
5 lead and/or mercury and/or PFOA. This work also includes investigation of new companies  
6 that ERC does not obtain any recovery through settlement or judgment; (2) VOLUNTARY  
7 COMPLIANCE PROGRAM (up to 10-20%): maintaining ERC's Voluntary Compliance  
8 Program by acquiring products from companies, developing and maintaining a case file, testing  
9 products from these companies, providing the test results and supporting documentation to the  
10 companies, and offering guidance in warning or implementing a self-testing program for lead  
11 and/or mercury and/or PFOA in dietary supplement products; and (3) "GOT LEAD"  
12 PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers  
13 of contaminated products that reach California consumers by providing access to free testing  
14 for lead in dietary supplement products (Products submitted to the program are screened for  
15 ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
16 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
17 that submitted the product).

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

23 **4.5** \$9,120.00 shall be distributed to Michael Freund & Associates as reimbursement  
24 of ERC's attorney fees, while \$26,411.03 shall be distributed to ERC for its in-house legal fees.  
25 Except as explicitly provided herein, each Party shall bear its own fees and costs.

26 **4.6** In the event that Happy Mammoth fails to remit the Total Settlement Amount  
27 owed under Section 4 of this Consent Judgment on or before the Due Date, Happy Mammoth  
28 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC

1 shall provide written notice of the delinquency to Happy Mammoth via electronic mail. If  
2 Happy Mammoth fails to deliver the Total Settlement Amount within five (5) days from the  
3 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment  
4 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,  
5 Happy Mammoth agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to  
6 collect the payment due under this Consent Judgment.

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

8 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
9 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
10 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
11 modified consent judgment.

12 **5.2** If Happy Mammoth seeks to modify this Consent Judgment under Section 5.1,  
13 then Happy Mammoth must provide written notice to ERC of its intent ("Notice of Intent"). If  
14 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then  
15 ERC must provide written notice to Happy Mammoth within thirty (30) days of receiving the  
16 Notice of Intent. If ERC notifies Happy Mammoth in a timely manner of ERC's intent to meet  
17 and confer, then the Parties shall meet and confer in good faith as required in this Section. The  
18 Parties shall meet in person, via remote meeting, or by telephone within thirty (30) days of  
19 ERC's notification of its intent to meet and confer. Within thirty (30) days of such meeting, if  
20 ERC disputes the proposed modification, ERC shall provide to Happy Mammoth a written  
21 basis for its position. The Parties shall continue to meet and confer for an additional thirty (30)  
22 days in an effort to resolve any remaining disputes. Should it become necessary, the Parties  
23 may agree in writing to different deadlines for the meet-and-confer period.

24 **5.3** In the event that Happy Mammoth initiates or otherwise requests a modification  
25 under Section 5.1, and the meet and confer process leads to a joint motion or joint application  
26 for a modification of the Consent Judgment, Happy Mammoth shall reimburse ERC its costs  
27 and reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
28 arguing the motion or application.

1           **5.4**     In the event that Proposition 65, either as a whole or as specifically applicable  
 2 to the Covered Products or listed chemicals at issue in the case, is repealed or federally  
 3 preempted, or if new or different safe harbor levels are established as applicable to the Covered  
 4 Products, or if Proposition 65 is otherwise rendered inapplicable to the Covered Products or the  
 5 listed chemicals at issue in this case, all by any final California regulation or statute, or by a  
 6 decision of the California Supreme Court or the United States Supreme Court or by the  
 7 California legislature or the United States Congress, or if any provision of this Consent  
 8 Judgment is specifically rendered inapplicable or no longer required as to the Covered  
 9 Products as a result of any such regulatory or statutory change, repeal or preemption or  
 10 decision of the California Supreme Court or the United States Supreme Court, or due to  
 11 binding federal laws or regulations, then Happy Mammoth may provide written notice to ERC  
 12 of any asserted change in the law and seek modification of this Consent Judgment pursuant to  
 13 Sections 5.1 – 5.3.

14       **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
 15       **JUDGMENT**

16           **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or  
 17 terminate this Consent Judgment.

18           **6.2**     If ERC alleges that any Covered Product fails to qualify as a Conforming  
 19 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
 20 inform Happy Mammoth in a reasonably prompt manner of its test results, including  
 21 information sufficient to permit Happy Mammoth to identify the Covered Products at issue.  
 22 Happy Mammoth shall, within thirty (30) days following such notice, provide ERC with testing  
 23 information, from an independent third-party laboratory meeting the requirements of Sections  
 24 3.4.3 and 3.4.4, demonstrating Happy Mammoth’s compliance with the Consent Judgment.  
 25 The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

26       **7.     APPLICATION OF CONSENT JUDGMENT**

27           This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
 28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
2 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application  
3 to any Covered Product that is distributed or sold exclusively outside the State of California and  
4 that is not used by California consumers.

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

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

13 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all  
14 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead  
15 and/or PFOA from the Covered Products and exposure to mercury from the Mercury Covered  
16 Product as set forth in the Notices of Violation. ERC, on behalf of itself only, hereby fully  
17 releases and discharges the Released Parties from any and all claims, actions, causes of action,  
18 suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could  
19 have been asserted from the handling, use, or consumption of the Covered Products, as to any  
20 alleged violation of Proposition 65 or its implementing regulations arising from the failure to  
21 provide Proposition 65 warnings on the Covered Products regarding lead and/or PFOA and on  
22 the Mercury Covered Product regarding mercury up to and including the Effective Date.  
23 However, Third-Party Sellers that do not provide the Warning after being instructed or notified  
24 by Happy Koala to do so, as outlined in Section 3.2, are not released from liability for  
25 violations of Proposition 65.

26 **8.3** ERC on its own behalf only, and Happy Mammoth on its own behalf only,  
27 further waive and release any and all claims they may have against each other for all actions or  
28 statements made or undertaken in the course of seeking or opposing enforcement of

1 Proposition 65 in connection with the Notices and Complaint up through and including the  
2 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
3 right to seek to enforce the terms of this Consent Judgment. However, Third-Party Sellers that  
4 do not provide the Warning after being instructed or notified by Happy Koala to do so, as  
5 outlined in Section 3.2, are not released from liability for violations of Proposition 65.

6 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
7 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
8 discovered. ERC on behalf of itself only, and Happy Mammoth on behalf of itself only,  
9 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
10 claims up through and including the Effective Date, including all rights of action therefore.  
11 ERC and Happy Mammoth acknowledge that the claims released in Sections 8.2 and 8.3 above  
12 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
13 any such unknown claims. California Civil Code section 1542 reads as follows:

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

18 ERC on behalf of itself only, and Happy Mammoth on behalf of itself only, acknowledge and  
19 understand the significance and consequences of this specific waiver of California Civil Code  
20 section 1542.

21 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
22 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
23 exposures to lead and PFOA in the Covered Products, and mercury in the Mercury Covered  
24 Product, as set forth in the Notices and Complaint.

25 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
26 environmental exposures arising under Proposition 65, nor shall it apply to any of Happy  
27 Mammoth's products other than the Covered Products.

28 ///

1 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

5 **10. GOVERNING LAW**

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

8 **11. PROVISION OF NOTICE**

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

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

13 Chris Heptinstall  
14 Executive Director  
15 Environmental Research Center  
16 3111 Camino Del Rio North, Suite 400  
17 San Diego, CA 92108  
18 Ph: (619) 500-3090  
19 Email: chris.heptinstall@erc501c3.org

20 With a copy to:

21 Michael Freund  
22 Michael Freund & Associates  
23 1919 Addison Street, Suite 104  
24 Berkeley, CA 94704  
25 Ph: (510) 499-1992  
26 Email: freund1@aol.com

27 **FOR HAPPY KOALA LLC, individually and dba HAPPY MAMMOTH:**

28 Legal Department  
Happy Koala LLC  
1910 Thomes Avenue  
Cheyenne, WY 82001  
Email: legal@happymammoth.co

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///

///



1 With a copy to:  
2 Abhishek Gurnani  
3 Amin Wasserman Gurnani  
4 230 W. Monroe Street, Suite 1405  
5 Chicago, IL 60606  
6 Ph: (312) 327-3325  
7 Email: agurnani@awglaw.com

8 **12. COURT APPROVAL**

9 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
10 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
11 Consent Judgment.

12 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
13 the Parties shall use their best efforts to resolve the concern in a timely manner, and, if  
14 possible, prior to the hearing on the motion.

15 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
16 void and have no force or effect.

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

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

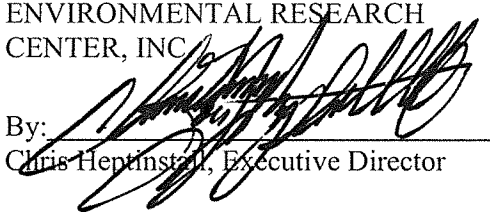
5 (2) Make the findings pursuant to California Health and Safety Code section  
6 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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:**

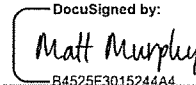
10  
11 Dated: 12/31, 2024

ENVIRONMENTAL RESEARCH  
CENTER, INC

12  
13 By:   
14 Chris Heptinstall, Executive Director

15 Dated: 12/3/2024, 2024

HAPPY KOALA LLC, individually and  
dba HAPPY MAMMOTH

16  
17 DocuSigned by:  
18   
19 By: Matt Murphy  
20 Its: CEO/Manager

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**APPROVED AS TO FORM:**

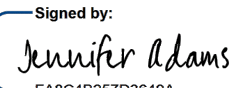
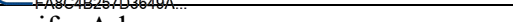
Dated: 12/3, 2024

MICHAEL FREUND & ASSOCIATES

By:   
Michael Freund  
Attorney for Plaintiff Environmental  
Research Center, Inc.

Dated: 12/2/2024, 2024

AMIN WASSERMAN GURNANI

Signed by:  
  
By:   
Jennifer Adams  
Attorney for Defendant Happy Koala  
LLC, individually and dba Happy  
Mammoth

**[PROPOSED] ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2025

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Judge of the Superior Court

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# **EXHIBIT A**

**Michael Freund & Associates**

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

Michael Freund, Esq.

July 12, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

**Happy Koala LLC, individually and dba Happy Mammoth**

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

- 1. Happy Mammoth NewSlim Complete Protein Meal Vanilla Bean – Lead, Mercury**
- 2. Happy Mammoth FitSlim SuperGreens Vanilla Bean – Lead**

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

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

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

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

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

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

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

Sincerely,



---

Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Happy Koala LLC, individually and dba Happy Mammoth and its Registered Agent 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 Happy Koala LLC, individually and dba Happy Mammoth**

I, Michael Freund, declare:

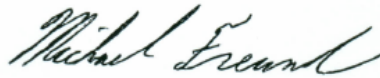
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

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

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

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



Dated: July 12, 2024

---

Michael Freund

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On July 12, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Happy Koala LLC, individually and dba  
Happy Mammoth  
1910 Thomes Avenue  
Cheyenne, WY 82001

Current President or CEO  
Happy Koala LLC, individually and dba  
Happy Mammoth  
2260 118 Avenue North  
St. Petersburg, FL 33716

InCorp Services, Inc.  
(Registered Agent for Happy Koala LLC,  
individually and dba Happy Mammoth)  
1910 Thomes Avenue  
Cheyenne, WY 82001

On July 12, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 12, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** 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 Violation of California Health & Safety Code §25249.5 *et seq.*

July 12, 2024

Page 5

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@sdcda.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

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

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

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

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

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

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

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

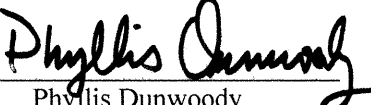
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

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

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

  
Phyllis Dunwoody

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

July 12, 2024

Page 7

**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 6<sup>th</sup> St  
Colusa, CA 95932

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

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

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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255 N. Forbes Street  
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District Attorney, Los Angeles  
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300 South G Street, Ste 300  
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District Attorney, Modoc  
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Alturas, CA 96101-4020

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District Attorney, San Mateo  
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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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

# **EXHIBIT B**

**Michael Freund & Associates**

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

Michael Freund, Esq.

July 26, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

**Happy Koala LLC, individually and dba Happy Mammoth**

**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. Happy Mammoth FitSlim SuperGreens Vanilla Bean - Perfluorooctanoic Acid (PFOA)**
- 2. Happy Mammoth NewSlim Complete Protein Meal Vanilla Bean- Perfluorooctanoic Acid (PFOA)**

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical 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 July 26, 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) recall the identified products so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for products sold in the future while reformulating such products to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed products, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

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

Sincerely,



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Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Happy Koala LLC, individually and dba Happy Mammoth and its Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Happy Koala LLC, individually and dba Happy Mammoth**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: July 26, 2024



---

Michael Freund

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On July 26, 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  
Happy Koala LLC, individually and dba  
Happy Mammoth  
1910 Thomes Avenue  
Cheyenne, WY 82001

Current President or CEO  
Happy Koala LLC, individually and dba  
Happy Mammoth  
2260 118 Avenue North  
St. Petersburg, FL 33716

InCorp Services, Inc.  
(Registered Agent for Happy Koala LLC,  
individually and dba Happy Mammoth)  
1910 Thomes Avenue  
Cheyenne, WY 82001

On July 26, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 26, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

July 26, 2024

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

July 26, 2024

Page 6

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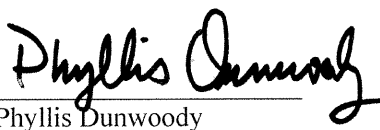
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cfepd@yolocounty.org

On July 26, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on July 26, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

July 26, 2024

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**Service List**

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County  
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District Attorney, Butte  
County  
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245  
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District Attorney, Colusa  
County  
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District Attorney, Kings  
County  
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District Attorney, Los Angeles  
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San Bernadino, CA 92415

District Attorney, San Mateo  
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District Attorney, Sutter  
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District Attorney, Tehama  
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District Attorney, Trinity  
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District Attorney, Yuba  
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Los Angeles City Attorney's  
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City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

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

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

Revised: May 2017

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