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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] STIPULATED**
28 **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 **1.2** ERC and Happy Mammoth are hereinafter referred to individually as a “Party”
10 or collectively as the “Parties.”

11 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
12 causes, helping safeguard the public from health hazards by reducing the use and misuse of
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
14 and encouraging corporate responsibility.

15 **1.4** For purposes of this Stipulated Consent Judgment (“Consent Judgment”), the
16 Parties agree that Happy Mammoth is a business entity that has employed ten or more persons at
17 all times relevant to this action and qualifies as a “person in the course of doing business” within
18 the meaning of Proposition 65. Happy Mammoth manufactures, distributes, and/or sells the
19 Covered Products.

20 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
21 dated July 12, 2024 and July 26, 2024 that were served on the California Attorney General,
22 other public enforcers, and Happy Mammoth (“Notices”). True and correct copies of the 60-
23 Day Notices dated July 12, 2024 and July 26, 2024 are attached hereto as **Exhibits A and B**
24 and each is incorporated herein by reference. More than 60 days have passed since the Notices
25 were served on the Attorney General, public enforcers, and Happy Mammoth and no
26 designated governmental entity has filed a Complaint against Happy Mammoth with regard to
27 the Covered Products or the alleged violations.

28 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by

1 California consumers exposes them to lead and/or mercury and/or PFOA without first
2 receiving clear and reasonable warnings from Happy Mammoth, which is in violation of
3 California Health and Safety Code section 25249.6. Happy Mammoth denies all material
4 allegations contained in the Notices and Complaint.

5 **1.7** The Parties have entered into this Consent Judgment in order to settle,
6 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
7 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
8 or be construed as an admission by any of the Parties or by any of their respective officers,
9 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
10 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
11 issue of law, or violation of law.

12 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
14 any current or future legal proceeding unrelated to these proceedings.

15 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
16 as a Judgment by this Court.

17 **2. JURISDICTION AND VENUE**

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

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

26 **3.1** Beginning on the Effective Date, Happy Mammoth shall be permanently
27 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
28 California,” or directly selling in the State of California, any Covered Product that exposes a

1 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or a
2 “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day and/or any
3 detectible level of PFOA unless it meets the warning requirements under Section 3.2.

4 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
5 of California” shall mean to directly ship a Covered Product into California for sale in
6 California or to sell a Covered Product to a distributor that Happy Mammoth knows will sell
7 the Covered Product in California.

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

15 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
16 Level” shall be measured in micrograms, and shall be calculated using the following formula:
17 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
18 product (using the largest serving size appearing on the product label), multiplied by servings
19 of the product per day (using the largest number of recommended daily servings appearing on
20 the label), which equals micrograms of mercury exposure per day. If the label contains no
21 recommended daily servings, then the number of recommended daily servings shall be one.

22 **3.1.4** So long as Happy Mammoth can provide documentation, if requested in
23 writing by ERC, Covered Products shipped, sold, or Distributed into the State of California by
24 Happy Mammoth prior to the Effective Date are not bound by the injunctive terms set forth in
25 this Section 3, including but not limited to the Daily Lead Exposure Level, Daily Mercury
26 Exposure Level, and warning and testing requirements, and are instead permitted to be sold as is
27 to California Consumers and are expressly released by Section 8 of this Consent Judgment.

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1 **3.2 Clear and Reasonable Warnings**


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

4 **OPTION 1:**

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

9 OR

10 **OPTION 2:**

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

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

25 The Warning shall be provided through one of the following methods: (1) a product-
26 specific warning provided on a posted sign, shelf tag, or shelf sign, for the Covered Product at
27 each point of display of the product; or (2) a product-specific warning provided via any
28 electronic device or process that automatically provides the warning to the purchaser prior to or

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

14 If a Covered Product is being sold by an online third-party seller or downstream reseller
15 customer (collectively referred to as “Third-Party Seller(s)”), who are subject to Proposition 65
16 and known to and authorized to sell such Covered Product by Happy Mammoth, and Happy
17 Mammoth cannot itself post the warning on the authorized Third-Party Seller’s website
18 because Happy Mammoth lacks control over such authorized Third-Party Seller’s website, then
19 Happy Mammoth must notify the authorized Third-Party Seller and/or its authorized agent, in
20 writing, of the authorized Third-Party Seller’s duty to provide an internet warning as part of the
21 condition of sale of the Covered Product. Happy Mammoth may comply with this obligation
22 to notify authorized Third-Party Sellers by complying with 27 C.C.R. § 25600.2 (2024) and
23 providing the information required by 27 C.C.R. § 25600.2 (2024), including labels, labeling,
24 shelf signs, or tags bearing the Warning, and all other necessary warning materials, to any such
25 authorized Third-Party Seller (or its authorized agent). The written notice required by this
26 Section shall instruct the Third-Party Seller that the labels, labeling, shelf signs, or tags bearing
27 the Warning must be displayed on or in proximity to the Covered Products with such
28 conspicuousness, as compared with other words, statements or designs as to render the

1 Warning likely to be seen, read, and understood by an ordinary individual prior to sale.

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

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

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

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

22 **3.3 Conforming Covered Products**

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

1 **3.4 Testing and Quality Control Methodology**

2 **3.4.1** Beginning within one year of the Effective Date, Happy Mammoth shall
3 arrange for lead and mercury and PFOA testing of the Covered Products at least once a year
4 for a minimum of three consecutive years by arranging for testing of three (3) randomly
5 selected samples of each of the Covered Products, in the form intended for sale to the end-user,
6 which Happy Mammoth intends to sell or is manufacturing for sale in California, directly
7 selling to a consumer in California or “Distributing into the State of California.” If tests
8 conducted pursuant to this Section demonstrate that no Warning is required for a Covered
9 Product during each of three consecutive years, then the testing requirements of this Section
10 will no longer be required as to that Covered Product. However, if during or after the three-
11 year testing period, Happy Mammoth changes ingredient suppliers for any of the Covered
12 Products and/or reformulates any of the Covered Products, Happy Mammoth shall test that
13 Covered Product annually for at least three (3) consecutive years after such change is made.

14 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
15 and/or the “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result
16 of the three (3) randomly selected samples of the Covered Products will be controlling.

17 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
18 laboratory method that complies with the performance and quality control factors appropriate
19 for the method used, including limit of detection and limit of quantification, sensitivity,
20 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
21 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
22 mg/kg for lead and mercury and the lowest level that can be reliably detected using available
23 technologies for PFOA.

24 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
25 independent third party laboratory certified by the California Environmental Laboratory
26 Accreditation Program or an independent third-party laboratory that is registered with the
27 United States Food & Drug Administration.

28 **3.4.5** Nothing in this Consent Judgment shall limit Happy Mammoth’s ability

1 to conduct, or require that others conduct, additional testing of the Covered Products, including
2 the raw materials used in their manufacture.

3 **3.4.6** Within thirty (30) days of ERC’s written request, which request shall not
4 be made more than once per year, Happy Mammoth shall deliver lab reports obtained pursuant
5 to Section 3.4 to ERC. Happy Mammoth shall retain all test results and documentation for a
6 period of five years from the date of each test.

7 **3.5** The testing and reporting requirements of Section 3.4 do not apply to any
8 Covered Product for which Happy Mammoth is providing a Warning, continuously and without
9 interruption from the Effective Date, pursuant to Section 3.2 of this Consent Judgment. In the
10 event a Warning is provided after the Effective Date but Happy Mammoth thereafter ceases to
11 provide the Warning, the testing and reporting requirements of Section 3.4 of this Consent
12 Judgment shall apply beginning within one year after the date the Warning ceases to be
13 provided, unless Happy Mammoth can show to the satisfaction of ERC that the cessation in
14 providing the Warning was a temporary error that was resolved when discovered. Nothing in
15 Section 3 of this Consent Judgment shall prevent or preclude ERC from obtaining and relying
16 upon its own testing for purposes of enforcement, so long as such testing meets the
17 requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent Judgment is
18 intended by either party to set a precedent for the level of lead, mercury, PFOA or other
19 chemicals that is permissible in consumer products under Proposition 65.

20 **4. SETTLEMENT PAYMENT**

21 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
22 attorney’s fees, and costs, Happy Mammoth shall make a total payment of \$55,000.00 (“Total
23 Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). Happy
24 Mammoth shall make this payment by wire transfer to ERC’s account, for which ERC will give
25 Happy Mammoth the necessary account information. The Total Settlement Amount shall be
26 apportioned as follows:

27 **4.2** \$8,000.00 shall be considered a civil penalty pursuant to California Health and
28 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,000.00) of the civil penalty to the

1 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
2 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
3 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,000.00) of the civil penalty.

4 **4.3** \$5,899.42 shall be distributed to ERC as reimbursement to ERC for reasonable
5 costs incurred in bringing this action.

6 **4.4** \$5,569.55 shall be distributed to ERC as an Additional Settlement Payment
7 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to
8 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities
9 that address the same public harm as allegedly caused by Defendant in this matter. These
10 activities are detailed below and support ERC’s overarching goal of reducing and/or
11 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s
12 activities have had, and will continue to have, a direct and primary effect within the State of
13 California because California consumers will be benefitted by the reduction and/or elimination
14 of exposure to lead and/or mercury and/or PFOA in dietary supplements and/or by providing
15 clear and reasonable warnings to California consumers prior to ingestion of the products.

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

1 companies, and offering guidance in warning or implementing a self-testing program for lead
2 and/or mercury and/or PFOA in dietary supplement products; and (3) “GOT LEAD”
3 PROGRAM (up to 5%): maintaining ERC’s “Got Lead?” Program which reduces the numbers
4 of contaminated products that reach California consumers by providing access to free testing
5 for lead in dietary supplement products (Products submitted to the program are screened for
6 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
7 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
8 that submitted the product).

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

14 **4.5** \$9,120.00 shall be distributed to Michael Freund & Associates as reimbursement
15 of ERC’s attorney fees, while \$26,411.03 shall be distributed to ERC for its in-house legal fees.
16 Except as explicitly provided herein, each Party shall bear its own fees and costs.

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

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
28 written stipulation of the Parties and upon entry by the Court of a modified consent judgment

1 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
2 modified consent judgment.

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

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

20 **5.4** In the event that Proposition 65, either as a whole or as specifically applicable
21 to the Covered Products or listed chemicals at issue in the case, is repealed or federally
22 preempted, or if new or different safe harbor levels are established as applicable to the Covered
23 Products, or if Proposition 65 is otherwise rendered inapplicable to the Covered Products or the
24 listed chemicals at issue in this case, all by any final California regulation or statute, or by a
25 decision of the California Supreme Court or the United States Supreme Court or by the
26 California legislature or the United States Congress, or if any provision of this Consent
27 Judgment is specifically rendered inapplicable or no longer required as to the Covered
28 Products as a result of any such regulatory or statutory change, repeal or preemption or

1 decision of the California Supreme Court or the United States Supreme Court, or due to
2 binding federal laws or regulations, then Happy Mammoth may provide written notice to ERC
3 of any asserted change in the law and seek modification of this Consent Judgment pursuant to
4 Sections 5.1 – 5.3.

5 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
6 **JUDGMENT**

7 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
8 terminate this Consent Judgment.

9 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
10 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
11 inform Happy Mammoth in a reasonably prompt manner of its test results, including
12 information sufficient to permit Happy Mammoth to identify the Covered Products at issue.
13 Happy Mammoth shall, within thirty (30) days following such notice, provide ERC with testing
14 information, from an independent third-party laboratory meeting the requirements of Sections
15 3.4.3 and 3.4.4, demonstrating Happy Mammoth’s compliance with the Consent Judgment.
16 The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

17 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

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

14 **8.3** ERC on its own behalf only, and Happy Mammoth on its own behalf only,
15 further waive and release any and all claims they may have against each other for all actions or
16 statements made or undertaken in the course of seeking or opposing enforcement of
17 Proposition 65 in connection with the Notices and Complaint up through and including the
18 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s
19 right to seek to enforce the terms of this Consent Judgment.

20 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
21 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
22 discovered. ERC on behalf of itself only, and Happy Mammoth on behalf of itself only,
23 acknowledge that this Consent Judgment is expressly intended to cover and include all such
24 claims up through and including the Effective Date, including all rights of action therefore.
25 ERC and Happy Mammoth acknowledge that the claims released in Sections 8.2 and 8.3 above
26 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
27 any such unknown claims. California Civil Code section 1542 reads as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
2 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
3 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
4 PARTY.

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

8 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
9 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
10 exposures to lead and/or mercury and/or PFOA in the Covered Products as set forth in the
11 Notices and Complaint.

12 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
13 environmental exposures arising under Proposition 65, nor shall it apply to any of Happy
14 Mammoth's products other than the Covered Products.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **10. GOVERNING LAW**

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

22 **11. PROVISION OF NOTICE**

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

26 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
27 Chris Heptinstall, Executive Director, Environmental Research Center
28 3111 Camino Del Rio North, Suite 400
 San Diego, CA 92108
 Ph: (619) 500-3090
 Email: chris.heptinstall@erc501c3.org

1 With a copy to:
2 Michael Freund
3 Michael Freund & Associates
4 1919 Addison Street, Suite 104
5 Berkeley, CA 94704
6 Ph: (510) 499-1992
7 Email: freund1@aol.com

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

9 Legal Department
10 Happy Koala LLC
11 1910 Thomes Avenue
12 Cheyenne, WY 82001
13 Email: legal@happymammoth.co

14 With a copy to:
15 Abhishek Gurnani
16 Amin Wasserman Gurnani
17 230 W. Monroe Street, Suite 1405
18 Chicago, IL 60606
19 Ph: (312) 327-3325
20 Email: agurnani@awglaw.com

21 **12. COURT APPROVAL**

22 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
23 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
24 Consent Judgment.

25 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and, if
27 possible, prior to the hearing on the motion.

28 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
void and have no force or effect.

13. EXECUTION AND COUNTERPARTS

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

1 **14. DRAFTING**

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

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

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

16 **16. ENFORCEMENT**

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

25 **17. ENTIRE AGREEMENT, AUTHORIZATION**

26 **17.1** This Consent Judgment contains the sole and entire agreement and
27 understanding of the Parties with respect to the entire subject matter herein, including any and
28 all prior discussions, negotiations, commitments, and understandings related thereto. No

1 representations, oral or otherwise, express or implied, other than those contained herein have
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
3 herein, shall be deemed to exist or to bind any Party.

4 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

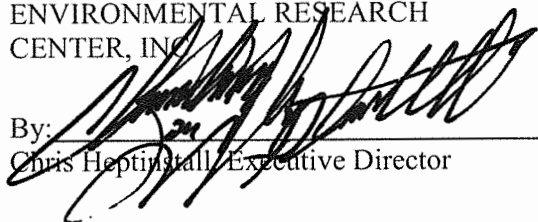
11 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
12 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
13 been diligently prosecuted, and that the public interest is served by such settlement; and

14 (2) Make the findings pursuant to California Health and Safety Code section
15 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

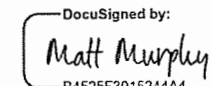
16 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
17 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

18 **IT IS SO STIPULATED:**

19
20 Dated: 11/18/, 2024

ENVIRONMENTAL RESEARCH
CENTER, INC
By: 
Chris Heptinstall, Executive Director

24 Dated: 11/18/2024, 2024

HAPPY KOALA LLC, individually and
dba HAPPY MAMMOTH
DocuSigned by:

By: Matt Murphy
Its: CEO/Manager

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APPROVED AS TO FORM:

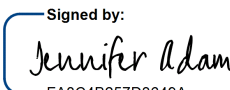
Dated: November 19, 2024

MICHAEL FREUND & ASSOCIATES

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

Dated: 11/19/2024, 2024

AMIN WASSERMAN GURNANI

Signed by:
By: 
FA8C4B267D2649A...
Jennifer Adams
Attorney for Defendant Happy Koala
LLC, individually and dba Happy
Mammoth

1 **[PROPOSED] ORDER AND JUDGMENT**

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5
6
7 Dated: _____, 2025

8 Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

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

Michael Freund, Esq.

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.**

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:

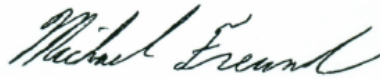
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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, 16th 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

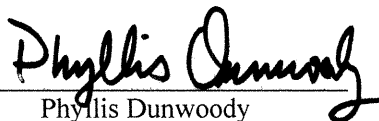
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 6th St
Colusa, CA 95932

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

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

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

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

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

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

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

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

District Attorney, Madera
County
300 South G Street, Ste 300
Madera, CA 93637

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B

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,



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:

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 26, 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
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10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

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

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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901 G Street
Sacramento, CA 95814
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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

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

July 26, 2024

Page 6

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, 16th 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

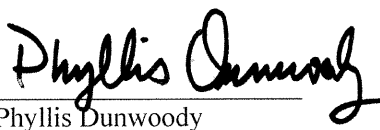
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Madera
County
300 South G Street, Ste 300
Madera, CA 93637

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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