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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,
vs.

**BIG SPOON ROASTERS LLC; and DOES
1-100**

Defendants.

CASE NO. 25CV114930

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 7, 2025
Trial Date: None set

1. INTRODUCTION

1.1 On March 7, 2025, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Big Spoon Roasters LLC (“Big Spoon Roasters”) and Does 1-100.

1 In this action, ERC alleges that a number of products manufactured, distributed, or sold by Big
2 Spoon Roasters contain lead, a chemical listed under Proposition 65 as a carcinogen and
3 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
4 warning. These products (referred to hereinafter individually as a “Covered Product” or
5 collectively as “Covered Products”) are: (1) Big Spoon Roasters Lemon Blueberry Cashew
6 Butter Bar, (2) Big Spoon Roasters Cranberry Cashew Peanut Butter Bar, (3) Big Spoon
7 Roasters Figgy Chai Peanut Butter Bar, (4) Big Spoon Roasters Cherry Chocolate Peanut
8 Butter Bar, (5) Big Spoon Roasters Apple Ginger Almond Butter Bar, and (6) Big Spoon
9 Roasters Apricot Pepita Peanut Butter Bar.

10 **1.2** ERC and Big Spoon Roasters are hereinafter referred to individually as a
11 “Party” or collectively as the “Parties.”

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

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

20 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
21 dated December 18, 2024 that was served on the California Attorney General, other public
22 enforcers, and Big Spoon Roasters (“Notice”). A true and correct copy of the 60-Day Notice
23 dated December 18, 2024 is attached hereto as **Exhibit A** and is incorporated herein by
24 reference. More than 60 days have passed since the Notice was served on the Attorney
25 General, public enforcers, and Big Spoon Roasters and no designated governmental entity has
26 filed a Complaint against Big Spoon Roasters with regard to the Covered Products or the
27 alleged violations.

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

1 California consumers exposes them to lead without first receiving clear and reasonable
2 warnings from Big Spoon Roasters, which is in violation of California Health and Safety Code
3 section 25249.6. Big Spoon Roasters denies all material allegations contained in the Notice and
4 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. The Compliance Date is the date that is 30 days after the
17 Effective Date.

18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning on the Compliance Date, Big Spoon Roasters shall be permanently
28 enjoined from manufacturing for sale in the State of California, "Distributing into the State of

California,” or directly selling in the State of California, any Covered Product that exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2.

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

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

3.2 Clear and Reasonable Warnings

If Big Spoon Roasters is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized (“Warning”):

OPTION 1:

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

OR

OPTION 2:

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

OR

///

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1 **OPTION 3:**

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

4 For all Options, the Warning shall begin either with the word “**CALIFORNIA**
5 **WARNING,**” as indicated above, or the word(s) “**CA WARNING**” or “**WARNING,**” in all
6 capital letters and bold print. Big Spoon Roasters shall use the phrase “cancer and” in the Option
7 1 and Option 2 Warnings or “carcinogen and” in the Option 3 Warning (each phrase referred to
8 individually as a “Cancer Phrase”) if Big Spoon Roaster knows that the “Daily Lead Exposure
9 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control
10 methodology set forth in Section 3.4 or if Big Spoon Roasters knows that another Proposition 65
11 chemical is present at a level that requires a cancer warning. If there is a chemical present at a
12 level that requires a cancer warning, the chemical requiring use of the Cancer Phrase in the
13 Warning shall always be identified.

14 The Warning shall be securely affixed to or printed upon the label of each Covered
15 Product and it must be set off from other surrounding information and enclosed in a box. In
16 addition, for any Covered Product sold over the internet, the Warning shall appear on the Covered
17 Product’s primary product display page or on the checkout page when a California delivery
18 address is indicated for any purchase of any Covered Product. The Warning may be provided by a
19 clearly marked hyperlink using the word “**WARNING**” (or the words “**CA WARNING**” or
20 “**CALIFORNIA WARNING**”) in all capital and bold letters. If the Warning is provided by a
21 clearly marked hyperlink, the hyperlink must go directly to a page prominently displaying the
22 Warning without content that detracts from the Warning. A Warning is not prominently displayed
23 if the purchaser has to search for it in the general content of the website. If the Warning is
24 provided on the checkout page, an asterisk or other identifying method must be utilized to identify
25 which products on the checkout page are subject to the Warning.

26 The Warning shall be at least the same size as the largest of any other health or safety
27 warnings also appearing on the website or on the label, but in no event shall the Warning be in
28 a type size smaller than 6-point type. No statements intended to or likely to have the effect of

1 diminishing the impact of the Warning on the average lay person shall accompany the
2 Warning. Further, no statements may accompany the Warning that state or imply that the
3 source of the listed chemical has an impact on or results in a less harmful effect of the listed
4 chemical.

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

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

14 **3.3 Conforming Covered Products**

15 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
16 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure
17 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
18 3.4, and that is not known by Big Spoon Roasters to contain other chemicals that violate
19 Proposition 65’s safe harbor thresholds.

20 **3.4 Testing and Quality Control Methodology**

21 **3.4.1** Beginning within one year of the Effective Date, Big Spoon Roasters
22 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
23 five (5) consecutive years by arranging for testing of a randomly selected sample of each of the
24 Covered Products being marketed, in the form intended for sale to the end-user, which Big
25 Spoon Roasters intends to sell or is manufacturing for sale in California, directly selling to a
26 consumer in California or “Distributing into the State of California.” If tests conducted
27 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
28 each of five consecutive years, then the testing requirements of this Section will no longer be

1 required as to that Covered Product. However, if, after the five-year testing period, Big Spoon
2 Roasters changes ingredient suppliers for any of the Covered Products and/or reformulates any
3 of the Covered Products, Big Spoon Roasters shall require that any new ingredient or
4 formulation meet a standard of not causing the Covered Product(s) to expose a person to a
5 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day. Furthermore, Big
6 Spoon Roasters shall test all new formulations to ensure compliance with Proposition 65
7 before finalizing them in production.

8 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
9 lead detection result of the randomly selected sample of the Covered Products will be
10 controlling.

11 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
12 laboratory method that complies with the performance and quality control factors appropriate
13 for the method used, including limit of detection and limit of quantification, sensitivity,
14 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
15 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
16 mg/kg.

17 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
18 independent third party laboratory certified by the California Environmental Laboratory
19 Accreditation Program, the Colorado Department of Public Health, an independent food testing
20 laboratory accredited with ISO/IEC 17025:2017 or its successor, or an independent third-party
21 laboratory that is registered with the United States Food & Drug Administration.

22 **3.4.5** Nothing in this Consent Judgment shall limit Big Spoon Roasters’
23 ability to conduct, or require that others conduct, additional testing of the Covered Products,
24 including the raw materials used in their manufacture.

25 **3.4.6** Within thirty (30) days of ERC’s written request, Big Spoon Roasters
26 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Big Spoon Roasters shall
27 retain all test results and documentation for a period of five years from the date of each test.

28 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC

1 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
2 testing meets the requirements of Sections 3.4.3 and 3.4.4. For the purpose of enforcement, ERC
3 may only test Covered Product samples purchased more than 120 days after the Effective Date.
4 Nothing in Section 3.4 of this Consent Judgment is intended by either party to set a precedent for
5 the level of lead or other chemicals that is permissible in consumer products under Proposition
6 65.

7 **4. SETTLEMENT PAYMENT**

8 **4.1** In full satisfaction of all potential civil penalties, additional settlement
9 payments, attorney's fees, and costs, Big Spoon Roasters shall make a total payment of
10 \$27,500.00 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due
11 Date"). Big Spoon Roasters shall make this payment by wire transfer to ERC's account, for
12 which ERC will give Big Spoon Roasters the necessary account information. The Total
13 Settlement Amount shall be apportioned as follows:

14 **4.2** \$4,125.00 shall be considered a civil penalty pursuant to California Health and
15 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$3,093.75) of the civil penalty to the
16 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
17 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
18 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,031.25) of the civil penalty.

19 **4.3** \$2,100.76 shall be distributed to ERC as reimbursement to ERC for reasonable
20 costs incurred in bringing this action.

21 **4.4** \$21,274.24 shall be distributed to ERC for its in-house legal fees. Except as
22 explicitly provided herein, each Party shall bear its own fees and costs.

23 **4.5** In the event that Big Spoon Roasters fails to remit the Total Settlement Amount
24 owed under Section 4 of this Consent Judgment on or before the Due Date, Big Spoon Roasters
25 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
26 shall provide written notice of the delinquency to Big Spoon Roasters via electronic mail. If Big
27 Spoon Roasters fails to deliver the Total Settlement Amount within five (5) days from the
28 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment

1 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
2 Big Spoon Roasters agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to
3 collect the payment due under this Consent Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
6 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
7 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
8 modified consent judgment.

9 **5.2** If Big Spoon Roasters seeks to modify this Consent Judgment under Section 5.1,
10 then Big Spoon Roasters must provide written notice to ERC of its intent ("Notice of Intent").
11 If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent,
12 then ERC must provide written notice to Big Spoon Roasters within thirty (30) days of
13 receiving the Notice of Intent. If ERC notifies Big Spoon Roasters in a timely manner of
14 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
15 required in this Section. The Parties shall meet in person, via remote meeting, or by telephone
16 within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty (30)
17 days of such meeting, if ERC disputes the proposed modification, ERC shall provide to Big
18 Spoon Roasters a written basis for its position. The Parties shall continue to meet and confer
19 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it
20 become necessary, the Parties may agree in writing to different deadlines for the meet-and-
21 confer period.

22 **5.3** In the event that Big Spoon Roasters initiates or otherwise requests a
23 modification under Section 5.1, and the meet and confer process leads to a joint motion or joint
24 application for a modification of the Consent Judgment, Big Spoon Roasters shall reimburse
25 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process
26 and filing and arguing the motion or application.

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28 ///

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
4 terminate this Consent Judgment.

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform Big Spoon Roasters in a reasonably prompt manner of its test results, including
8 information sufficient to permit Big Spoon Roasters to identify the Covered Products at issue.
9 Big Spoon Roasters shall, within thirty (30) days following such notice, provide ERC with
10 testing information, from an independent third-party laboratory meeting the requirements of
11 Sections 3.4.3 and 3.4.4, demonstrating Big Spoon Roasters' compliance with the Consent
12 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
13 legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

22 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
23 behalf of itself and in the public interest, and Big Spoon Roasters and its respective officers,
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
25 franchisees, licensees, customers (not including private label customers of Big Spoon
26 Roasters), distributors, wholesalers, retailers, and all other upstream and downstream entities in
27 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of
28 any of them (collectively, "Released Parties").

1 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
2 claims for violations of Proposition 65 up to, and including, the Compliance Date based on
3 exposure to lead from the Covered Products as set forth in the Notice of Violation. ERC, on
4 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
5 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
6 expenses asserted, or that could have been asserted from the handling, use, or consumption of
7 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
8 regulations arising from the failure to provide Proposition 65 warnings on the Covered
9 Products regarding lead up to, and including, the Compliance Date.

10 **8.3** ERC on its own behalf only, and Big Spoon Roasters on its own behalf only,
11 further waive and release any and all claims they may have against each other for all actions or
12 statements made or undertaken in the course of seeking or opposing enforcement of
13 Proposition 65 in connection with the Notice and Complaint up to, and including, the
14 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
15 right to seek to enforce the terms of this Consent Judgment.

16 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
17 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
18 discovered. ERC on behalf of itself only, and Big Spoon Roasters on behalf of itself only,
19 acknowledge that this Consent Judgment is expressly intended to cover and include all such
20 claims up to, and including, the Compliance Date, including all rights of action therefore. ERC
21 and Big Spoon Roasters acknowledge that the claims released in Sections 8.2 and 8.3 above
22 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
23 any such unknown claims. California Civil Code section 1542 reads as follows:

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

ERC on behalf of itself only, and Big Spoon Roasters on behalf of itself only, acknowledge

1 and understand the significance and consequences of this specific waiver of California Civil
2 Code section 1542.

3 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
4 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
5 exposures to lead in the Covered Products as set forth in the Notice and Complaint.

6 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
7 environmental exposures arising under Proposition 65, nor shall it apply to any of Big Spoon
8 Roasters' products other than the Covered Products.

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

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

21 Chris Heptinstall, Executive Director, Environmental Research Center
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

24 With a copy to:

25 Charles W. Poss
26 Environmental Research Center, Inc.
27 3111 Camino Del Rio North, Suite 400
28 San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

1 **FOR BIG SPOON ROASTERS LLC:**

2 Mark Overbay
3 Co-Founder & President
4 Big Spoon Roasters
5 500 Meadowlands Drive
6 Hillsborough, NC 27278
7 Email: mark@bigspoonroasters.com

8 With a copy to:
9 Phillip L. Hinerman
10 Christin Kim
11 Fox Rothschild LLP
12 345 California St, Ste 2200
13 San Francisco, CA 94104
14 Ph: (415) 364-5540
15 Email: phinerman@foxrothschild.com; christinkim@foxrothschild.com

16 **12. COURT APPROVAL**

17 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
18 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
19 Consent Judgment.

20 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
21 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
22 prior to the hearing on the motion.

23 **12.3** If this [Proposed] Stipulated Consent Judgment is not approved by the Court, it
24 shall be void and have no force or effect.

25 **13. EXECUTION AND COUNTERPARTS**

26 This Consent Judgment may be executed in counterparts, which taken together shall be
27 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
28 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,

1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
4 equally in the preparation and drafting of this Consent Judgment.

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

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

11 **16. ENFORCEMENT**

12 ERC or Big Spoon Roasters may, by motion or order to show cause before the Superior
13 Court of Alameda County, enforce the terms and conditions contained in this Consent
14 Judgment. In any action brought by ERC to enforce this Consent Judgment, ERC may seek
15 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with
16 the Consent Judgment.

17 To the extent the failure to comply with the Consent Judgment constitutes a violation of
18 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
19 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
20 provided by law for failure to comply with Proposition 65 or other laws.

21 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

28 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully

1 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

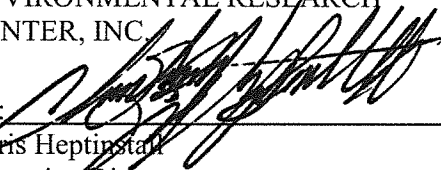
10 (2) Make the findings pursuant to California Health and Safety Code section
11 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

14 **IT IS SO STIPULATED:**

15 Dated: 3/27/, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

17 By: 
18 Chris Heptinstall
19 Executive Director

20 Dated: 03/27/25, 2025

BIG SPOON ROASTERS LLC

DocuSigned by:

22 

5DB207ADCEAB442

23 By: Mark Overbay

24 Its: Managing Member

25 ///

26 ///

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28 ///

APPROVED AS TO FORM:

Dated: March 27, 2025

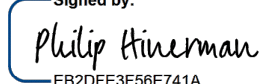
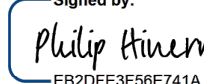
ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 

Charles W. Poss
In-House Counsel

Dated: 03/26/25, 2025

FOX ROTHSCHILD LLP

Signed by:

By: 

Philip L. Hinerman
Attorney for Big Spoon Roasters LLC

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court

EXHIBIT A



Environmental Research Center

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

December 18, 2024

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Big Spoon Roasters LLC

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

- 1. Big Spoon Roasters Lemon Blueberry Cashew Butter Bar - Lead**
- 2. Big Spoon Roasters Cranberry Cashew Peanut Butter Bar - Lead**

3. **Big Spoon Roasters Figgy Chai Peanut Butter Bar - Lead**
4. **Big Spoon Roasters Cherry Chocolate Peanut Butter Bar - Lead**
5. **Big Spoon Roasters Apple Ginger Almond Butter Bar - Lead**
6. **Big Spoon Roasters Apricot Pepita Peanut Butter Bar - Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 18, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

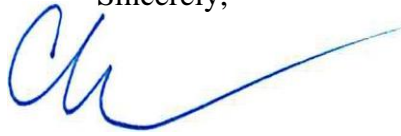
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified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

December 18, 2024

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

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Big Spoon Roasters LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Big Spoon Roasters LLC

I, Charles Poss, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party identified in the notices has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: December 18, 2024



Charles Poss

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On December 18, 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:

Mark Overbay, President
or Current President or CEO
Big Spoon Roasters LLC
500 Meadowlands Dr
Hillsborough, NC 27278

Mark Overbay
(Registered Agent for Big Spoon
Roasters LLC)
500 Meadowlands Dr
Hillsborough, NC 27278

On December 18, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On December 18, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Royl Roberts, Interim District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

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

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

December 18, 2024

Page 6

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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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inyoda@inyocounty.us

Devin Chandler, Program Coordinator
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Susanville, CA 96130
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Lori E. Frugoli, District Attorney
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Mariposa, CA 95338
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Prop65@countyofmerced.com

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Prop65DA@co.monterey.ca.us

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CEPD@countyofnapa.org

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Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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Santa Ana, CA 92703
Prop65notice@ocdapa.org

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Roseville, CA 95678
Prop65@placer.ca.gov

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davidhollister@countyofplumas.com

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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
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SanDiegoDAProp65@sdcdca.org

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San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

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

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

December 18, 2024

Page 7

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222 E. Weber Avenue, Room 202
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DAConsumer.Environmental@sjcda.org

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edobroth@co.slo.ca.us

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

Bud Porter, Supervising Deputy District Attorney
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San Jose, CA 95110
EPU@da.sccgov.org

Nora V. Frimann, City Attorney
Santa Clara City Attorney
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Proposition65notices@sanjoseca.gov

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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Carla Rodriguez, District Attorney
Sonoma County
600 Administration Dr, Rm 212
Santa Rosa CA 95403
ECLD@sonoma-county.org

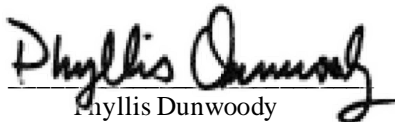
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 December 18, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:
NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;
CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on December 18, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

December 18, 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 Bernardino, 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.