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

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

20 **Plaintiff,**

21 **vs.**

22 **EARTH'S CREATION USA, INC.; and**
23 **DOES 1-100**

24 **Defendants.**

25 **CASE NO. 25CV151953**

26 **[PROPOSED] STIPULATED**
27 **CONSENT JUDGMENT**

28 Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 29, 2025

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On October 29, 2025, Plaintiff Environmental Research Center, Inc. ("ERC"), a
3 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 pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),
6 against Earth's Creation USA, Inc. ("Earth's Creation USA") and Does 1-100. Subsequently,

1 on January 20, 2026, a First Amended Complaint was filed (the operative Complaint,
2 hereinafter referred to as “Complaint”). In this action, ERC alleges that a number of products
3 manufactured, distributed, or sold by Earth’s Creation USA contain lead, a chemical listed
4 under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this
5 chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) EC Sports
7 Greens N' Reds Blend Superfoods Mental Boost - Probiotics - Adaptogens Pineapple Punch,
8 (2) EC Sports Greens N' Reds Blend Superfoods Mental Boost - Probiotics - Adaptogens
9 Peach Berry, (3) EC Sports Whey+ with Digestive Enzymes Protein Powder + Collagen
10 Peptides Double Chocolate, (4) EC Sports Xtreme Force X Extreme Pre-Workout Juicy Peach,
11 (5) EC Sports Xtreme Force X Extreme Pre-Workout Rocket Pop, (6) EC Sports Non-Stim
12 Pump Pre-Workout Juicy Peach, (7) Earth’s Creation Linaza The Linaza Diet System, (8)
13 Earth’s Creation Natural Glucose Support Blood Sugar Support, and (9) Earth’s Creation
14 Natural Shark Cartilage with Protein & Calcium 750 MG Per Serving.

15 **1.2** ERC and Earth’s Creation USA may also hereinafter be referred to individually
16 as a “Party” or collectively as the “Parties.”

17 **1.3** ERC is a 501(c)(3) California non-profit corporation dedicated to, among other
18 causes, helping safeguard the public from health hazards by reducing the use and misuse of
19 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
20 and encouraging corporate responsibility.

21 **1.4** For purposes of this Proposed Stipulated Consent Judgment (“Consent
22 Judgment”), the Parties agree that Earth’s Creation USA, Inc. is a business entity that has
23 employed ten or more persons at all times relevant to this action and qualifies as a “person in the
24 course of doing business” within the meaning of Proposition 65. Earth’s Creation USA
25 manufactures, distributes, and/or sells the Covered Products.

26 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
27 dated July 17, 2025, and September 29, 2025, which were served on the California Attorney
28 General, other public enforcers, and Earth’s Creation USA (“Notices”). True and correct copies

1 of the 60-Day Notices dated July 17, 2025, and September 29, 2025, are attached hereto as
2 **Exhibits A and B**, and each is incorporated herein by reference. More than 60 days have
3 passed since the Notices were served on the Attorney General, public enforcers, and Earth's
4 Creation USA, and no designated governmental entity has filed an action against Earth's
5 Creation USA with regard to the Covered Products or the alleged violations.

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

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

18 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
20 any current or future legal proceeding unrelated to these proceedings.

21 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
22 as a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

24 For purposes of this Consent Judgment and any further court action that may become
25 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
26 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
27 over Earth's Creation USA as to the acts alleged in the Complaint, that venue is proper in
28 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and

1 final resolution of all claims up through and including the Effective Date that were or could have
2 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

4 **3.1** Beginning on the Effective Date, Earth’s Creation USA shall be permanently
5 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
6 California,” or directly selling in the State of California, any Covered Product that exposes a
7 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it
8 meets the warning requirements under Section 3.2.

9 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
10 of California” shall mean to directly ship a Covered Product into California for sale in
11 California or to sell a Covered Product to a distributor that Earth’s Creation USA knows or has
12 reason to know will sell the Covered Product in California.

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

20 **3.2 Clear and Reasonable Warnings**

21 If Earth’s Creation USA is required to provide a warning pursuant to Section 3.1, one of
22 the following warning must be utilized (“Warning”):


23 **OPTION 1:**

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

27 OR

28 ///

1 **OPTION 2:**

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

3
4 OR

5 **OPTION 3:**

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

8 OR

9 **OPTION 4:**

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

12
13 The Warning shall begin either with the word “**WARNING,**” as indicated above, or the
14 words “**CA WARNING**” or “**CALIFORNIA WARNING,**” in all capital letters and bold print.
15 Earth’s Creation USA shall use the phrase “cancer and” in the Option 1, Option 2, and Option 3
16 Warnings or “a carcinogen and” in the Option 4 Warning (each phrase referred to individually as
17 a “Cancer Phrase”) if Earth’s Creation USA has reason to believe that the “Daily Lead Exposure
18 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control
19 methodology set forth in Section 3.4 or if Earth’s Creation USA knows or reasonably should
20 know that another Proposition 65 chemical is present at a level requiring a cancer warning. If
21 there is a chemical present at a level that requires a cancer warning, the chemical requiring use of
22 the phrase “cancer and” in the Warning shall always be identified.

23 The Option 2 Warning may only be used until January 1, 2028. Any Covered Product that
24 is manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of
25 when the Covered Product is sold to a consumer. For the Option 2 Warning, a symbol consisting
26 of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be
27 placed to the left of the text of the Warning, in a size no smaller than the height of the word
28 “**WARNING.**” Where the sign, label or shelf tag for the product is not printed using the color

1 yellow, the symbol may be printed in black and white.

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

14 The Warning shall be at least the same size as the largest of any other health or safety
15 warnings also appearing on the website or on the label and in no event less than six (6) point type.
16 No statements intended to or likely to have the effect of diminishing the impact of the Warning on
17 the average lay person shall accompany the Warning. Further, no statements may accompany the
18 Warning that state or imply that the source of the listed chemical has an impact on or results in a
19 less harmful effect of the listed chemical.

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

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

1 **3.3 Conforming Covered Products**

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

7 **3.4 Testing and Quality Control Methodology**

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

20 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
21 lead detection result of the three (3) randomly selected samples of the Covered Products will
22 be controlling.

23 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
24 laboratory method that complies with the performance and quality control factors appropriate
25 for the method used, including limit of detection and limit of quantification, sensitivity,
26 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
27 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
28 mg/kg.

1 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
2 independent third party laboratory certified by the State of California or accredited by the State
3 of California, a federal agency, the National Environmental Laboratory Accreditation Program
4 or similar nationally recognized accrediting organization to perform the particular method of
5 detection and analysis in question.

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

9 **3.4.6** Within thirty (30) days of ERC’s written request, Earth’s Creation USA
10 shall deliver lab reports obtained pursuant to Sections 3.4.1 – 3.4.5 to ERC. Earth’s Creation
11 USA shall retain all test results and documentation for a period of five years from the date of
12 each test.

13 **3.4.7** The testing and reporting requirements set forth in Section 3.4 shall not
14 apply to any Covered Product for which Earth’s Creation USA is providing a Warning,
15 continuously and without interruption from the Effective Date, pursuant to Section 3.2 of this
16 Consent Judgment. In the event a Warning is provided after the Effective Date but Earth’s
17 Creation USA thereafter ceases to provide the Warning, Earth’s Creation USA may only do so
18 after it has tested such Covered Product, and Earth’s Creation USA shall be required to comply
19 with the testing requirements of this section beginning immediately after the date the Warning
20 ceases to be provided, unless Earth’s Creation USA can demonstrate to the satisfaction of ERC
21 that the cessation in providing the Warning was a temporary error that was resolved promptly
22 upon discovery. Additionally, the testing and reporting requirements of Section 3.4 shall not
23 apply to any Covered Product that has been discontinued and is no longer being manufactured or
24 distributed for sale by Earth’s Creation USA; however, such requirements shall resume if
25 production, manufacturing, distribution, or sale of that Covered Product is thereafter resumed.

26 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
27 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
28 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent

1 Judgment is intended by either party to set a precedent for the level of lead or other chemicals
2 that is permissible in consumer products under Proposition 65.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, additional settlement
5 payments, attorney's fees, and costs, Earth's Creation USA shall make a total payment of
6 \$40,000 ("Total Settlement Amount") to ERC in three periodic payments (the "Periodic
7 Payments") according to the following payment schedule ("Due Dates"):

- 8 • Payment 1 -- \$15,000.00 within 10 business days of the Effective Date (the first Due
9 Date).
- 10 • Payment 2 -- \$15,000.00 within 40 calendar days of the Effective Date (the second
11 Due Date).
- 12 • Payment 3 -- \$10,000.00 within 70 calendar days of the Effective Date (the third Due
13 Date).

14 Earth's Creation USA shall make these Periodic Payments by wire transfer to ERC's account, for
15 which ERC will give Earth's Creation USA the necessary account information no later than three
16 (3) business days before the first Periodic Payment is due. Each Periodic Payment shall be
17 subject to the notice and cure provisions set forth in Section 4.5.

18 The Total Settlement Amount shall be apportioned as follows:

19 **4.2** \$3,000.00 shall be considered a civil penalty pursuant to California Health and
20 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$2,250.00) of the civil penalty to the
21 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
22 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
23 Code section 25249.12(c). ERC will retain the remaining 25% (\$750.00) of the civil penalty.

24 **4.3** \$11,541.51 shall be distributed to ERC as reimbursement to ERC for reasonable
25 costs incurred in bringing this action.

26 **4.4** \$25,458.49 shall be distributed to ERC for its in-house legal fees. Except as
27 explicitly provided herein, each Party shall bear its own fees and costs.

28 **4.5** In the event that Earth's Creation USA fails to timely remit, in full, any of the

1 Periodic Payments required under Section 4.1 of this Consent Judgment on or before the
2 applicable Due Date, Earth's Creation USA shall be deemed to be in material breach of its
3 obligations under this Consent Judgment. ERC shall provide written notice of the delinquency
4 via electronic mail to Earth's Creation USA and its counsel. Earth's Creation USA shall have
5 five (5) business days from receipt of such written notice (the "Cure Period") to cure the
6 delinquency. If Earth's Creation USA fails to cure the delinquency within five (5) business
7 days from the written notice, the Total Settlement Amount, less any amounts previously paid
8 pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the
9 statutory judgment rate under Code of Civil Procedure section 685.010 beginning on the first
10 day after expiration of the Cure Period, and Earth's Creation USA shall forfeit any release
11 provisions in Section 8 that are for the benefit of Earth's Creation USA and the Released
12 Parties (as defined in Section 8.1) until such time as the Total Settlement Amount, less any
13 amounts previously paid pursuant to Section 4.1, is paid in full. Additionally, Earth's Creation
14 USA agrees to pay ERC's reasonable attorneys' fees and costs incurred for any efforts to
15 collect any uncured, delinquent payment due under this Consent Judgment.

16 **5. MODIFICATION OF CONSENT JUDGMENT**

17 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
18 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
19 or (ii) by motion of either Party pursuant to Section 5.3, and based upon an agreement to
20 modify the Consent Judgment, and upon entry by the Court of a modified consent judgment.

21 **5.2** If Earth's Creation USA seeks to modify this Consent Judgment under Section
22 5.1, then Earth's Creation USA must provide written notice to ERC of its intent ("Notice of
23 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
24 Intent, then ERC must provide written notice to Earth's Creation USA within thirty (30) days of
25 receiving the Notice of Intent. If ERC notifies Earth's Creation USA in a timely manner of
26 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
27 required in this Section. The Parties shall meet in person, via remote meeting, or by telephone
28 within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty (30)

1 days of such meeting, if ERC disputes the proposed modification, ERC shall provide to Earth's
2 Creation USA a written basis for its position. The Parties shall continue to meet and confer for
3 an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
4 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
5 period.

6 **5.3** In the event that Earth's Creation USA initiates or otherwise requests a
7 modification under Section 5.1, and the meet and confer process leads to an agreed upon
8 motion or stipulation for a modification of the Consent Judgment, Earth's Creation USA shall
9 reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-
10 confer process and filing and arguing the motion or application.

11 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT** 12 **JUDGMENT**

13 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
14 terminate this Consent Judgment.

15 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
16 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
17 inform Earth's Creation USA in a reasonably prompt manner of its test results, including
18 information sufficient to permit Earth's Creation USA to identify the Covered Products at issue.
19 Earth's Creation USA shall, within thirty (30) days following such notice, provide ERC with
20 testing information from an independent third-party laboratory meeting the requirements of
21 Sections 3.4.3 and 3.4.4, demonstrating Earth's Creation USA's compliance with the Consent
22 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
23 legal action. ERC shall not initiate any enforcement action unless and until the Parties have
24 met and conferred in good faith (or ERC has exhausted, in good faith, its attempts to meet and
25 confer) and Earth's Creation USA has been provided a reasonable opportunity, not less than
26 forty-five (45) days from receipt of ERC's written notice, to cure any alleged non-compliance.

27 **7. APPLICATION OF CONSENT JUDGMENT**

28 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their

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

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

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

14 **8.2** ERC, acting in the public interest, releases the Released Parties from any
15 and all claims for violations of Proposition 65 up to and including the Effective Date based on
16 exposure to lead from the Covered Products as set forth in the Notices of Violation. ERC, on
17 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all
18 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
19 expenses asserted, or that could have been asserted from the handling, use, or consumption of
20 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
21 regulations arising from the failure to provide Proposition 65 warnings on the Covered
22 Products regarding lead up to and including the Effective Date.

23 **8.3** ERC on its own behalf only, and Earth’s Creation USA on its own behalf
24 only, further waive and release any and all claims they may have against each other for all
25 actions or statements made or undertaken in the course of seeking or opposing enforcement of
26 Proposition 65 in connection with the Notices and Complaint up to and including the Effective
27 Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s right to seek
28 to enforce the terms of this Consent Judgment.

1 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
2 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
3 discovered. ERC on behalf of itself only, and Earth’s Creation USA on behalf of itself only,
4 acknowledge that this Consent Judgment is expressly intended to cover and include all such
5 claims up to and including the Effective Date, including all rights of action therefor. ERC and
6 Earth’s Creation USA acknowledge that the claims released in Sections 8.2 and 8.3 above may
7 include unknown claims and nevertheless waive California Civil Code section 1542 as to any
8 such unknown claims. California Civil Code section 1542 reads as follows:

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

15 ERC on behalf of itself only, and Earth’s Creation USA on behalf of itself only, acknowledge
16 and understand the significance and consequences of this specific waiver of California Civil
17 Code section 1542.

18 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
19 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
20 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

21 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
22 environmental exposures arising under Proposition 65, nor shall it apply to any of Earth’s
23 Creation USA’s products other than the Covered Products.

24 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

28 **10. GOVERNING LAW**

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

1 **10.2** In the event that Proposition 65, either as a whole or as specifically applicable to
2 the Covered Products or listed chemical at issue in the case, is repealed or federally preempted,
3 or if new or different safe harbor levels are established as applicable to the Covered Products, or
4 if Proposition 65 is otherwise rendered inapplicable to the Covered Products or the listed
5 chemical at issue in this case, by any final California regulation or statute, or by a decision of the
6 California Supreme Court or the United States Supreme Court or by the California legislature or
7 the United States Congress, or if any provision of this Consent Judgment is specifically rendered
8 inapplicable or no longer required as to the Covered Products as a result of any such regulatory
9 or statutory change, repeal or preemption or decision of the California Supreme Court or the
10 United States Supreme Court, or due to binding federal laws or regulations, then Earth's Creation
11 USA may provide written notice to ERC of any asserted change in the law and seek modification
12 of this Consent Judgment pursuant to Sections 5, and the approval of such modification shall not
13 be unreasonably opposed or withheld by ERC.

14 **11. PROVISION OF NOTICE**

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

18 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
19 Chris Heptinstall, Executive Director, Environmental Research Center
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108
22 Ph: (619) 500-3090
23 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

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1 **FOR EARTH'S CREATION USA, INC.:**

2 Donald Passwaters

3 CEO, Earth's Creation USA, Inc.

4 18 Page Court

5 Travelers Rest, SC 29690

6 Email: Donald@earthscreationusa.com

7 With a copy to:

8 Landon D. Bailey

9 Bailey PLC

10 1200 Suncast Lane, Suite 7

11 El Dorado Hills, CA 95762

12 Ph: (916) 713-2580

13 Email: landon@baileyplc.com

14 **12. COURT APPROVAL**

15 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
16 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
17 Consent Judgment.

18 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
19 the Parties shall use their best efforts to resolve the concern in a timely manner, and, if
20 possible, prior to the hearing on the motion.

21 **12.3** If this Consent Judgment is not approved by the Court, it shall be void and have
22 no force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

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

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
3 equally in the preparation and drafting of this Consent Judgment.

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

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

10 **16. ENFORCEMENT**

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

19 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

26 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the Party he or she represents to stipulate to this Consent Judgment.

28 ///

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

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

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

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

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

13 **IT IS SO STIPULATED:**


14
15 Dated: 2/19/, 2026

ENVIRONMENTAL RESEARCH
CENTER, INC.

16
17 By: 
18 Chris Heptinstall, Executive Director

19
20 Dated: February 18, 2026

EARTH'S CREATION USA, INC.

21
22 
23 By: Daniella Bishop
24 Its: Brand Manager

25 ///

26 ///

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APPROVED AS TO FORM:

Dated: February 19, 2026

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Charles W. Poss
In-House Counsel

Dated: 2/19, 2026

BAILEY PLC

By: 
Landon D. Bailey
Attorney for Earth's Creation USA, Inc.

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2026 _____
Judge of the Superior Court

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EXHIBIT A



Environmental Research Center

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

July 17, 2025

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:

Earth's Creation USA, Inc., individually and dba EC Sports

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. EC Sports Greens N' Reds Blend Superfoods Mental Boost - Probiotics - Adaptogens Pineapple Punch - Lead**

2. **EC Sports Greens N' Reds Blend Superfoods Mental Boost - Probiotics - Adaptogens Peach Berry - Lead**
3. **EC Sports Whey+ with Digestive Enzymes Protein Powder + Collagen Peptides Double Chocolate - Lead**
4. **EC Sports Xtreme Force X Extreme Pre-Workout Juicy Peach - Lead**
5. **EC Sports Xtreme Force X Extreme Pre-Workout Rocket Pop - Lead**
6. **EC Sports Non-Stim Pump Pre-Workout Juicy Peach- 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 July 17, 2022, 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.

July 17, 2025

Page 3

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 Earth's Creation USA, Inc., individually and dba EC Sports 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 Earth's Creation USA, Inc., individually and dba EC Sports

I, Charles Poss, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have 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: July 17, 2025

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 July 17, 2025, 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:

Donald Passwaters, Chief Executive Officer
or Current President or CEO
Earth's Creation USA, Inc., individually
and dba EC Sports
18 Page Court
Travelers Rest, SC 29690

Maria Passwaters
(Registered Agent for Earth's Creation USA, Inc.,
individually and dba EC Sports)
18 Page Court
Travelers Rest, SC 29690

On July 17, 2025, 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 July 17, 2025, 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.*

July 17, 2025

Page 6

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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inyoda@inyocounty.us

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

Lori E. Frugoli, District Attorney
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San Rafael, CA 94903
consumer@marincounty.org

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Mariposa, CA 95338
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Merced, CA 95340
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
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Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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Prop65@placer.ca.gov

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Summer Stephan, District Attorney
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SanDiegoDAProp65@sdca.org

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

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

Henry Lifton, Deputy City Attorney
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.*

July 17, 2025

Page 7

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

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

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ECLD@sonoma-county.org

Christopher Dalbey, Deputy District Attorney
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DAProp65@co.santa-barbara.ca.us

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Prop65@co.tulare.ca.us

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

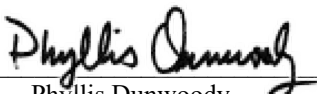
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On July 17, 2025, 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 July 17, 2025, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Madera
County
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
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Red Bluff, CA 96080

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

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

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



Environmental Research Center

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

September 29, 2025

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:

Earth's Creation USA, Inc., individually and dba Earth's Creation

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. Earth's Creation Linaza The Linaza Diet System - Lead**
- 2. Earth's Creation Natural Glucose Support Blood Sugar Support - Lead**

3. Earth's Creation Natural Shark Cartilage with Protein & Calcium 750 MG Per Serving – 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 September 29, 2022, 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.

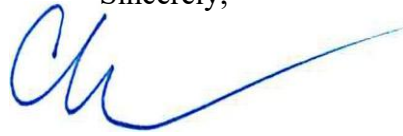
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified 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.

September 29, 2025

Page 3

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 Earth's Creation USA, Inc., individually and dba Earth's Creation 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 Earth's Creation USA, Inc., individually and dba Earth's Creation

I, Charles Poss, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have 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: September 29, 2025

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 September 29, 2025, 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:

Donald Passwaters, Chief Executive Officer
or Current President or CEO
Earth's Creation USA, Inc., individually
and dba Earth's Creation
18 Page Court
Travelers Rest, SC 29690

Maria Passwaters
(Registered Agent for Earth's Creation USA, Inc.,
individually and dba Earth's Creation)
18 Page Court
Travelers Rest, SC 29690

On September 29, 2025, 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 September 29, 2025, 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
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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.*

September 29, 2025

Page 6

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consumerprotection@fresnocountyca.gov

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Independence, CA 93526
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Devin Chandler, Program Coordinator
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Susanville, CA 96130
dchandler@co.lassen.ca.us

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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
Prop65@rivcoda.org

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Prop65@sacda.org

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SanDiegoDAProp65@sdca.org

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

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

Henry Lifton, Deputy City Attorney
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.*

September 29, 2025

Page 7

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

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DAProp65@co.santa-barbara.ca.us

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Prop65@co.tulare.ca.us

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

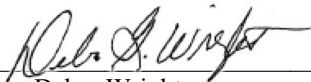
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On September 29, 2025, 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 September 29, 2025, in Fort Oglethorpe, Georgia.



Debra Wright

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.