

FILED BY FAX
ALAMEDA COUNTY
October 26, 2017
CLERK OF
THE SUPERIOR COURT
By Dajuana Turner, Deputy
CASE NUMBER:
RG17880587

1 Anne Barker (SBN 253824)
2 Environmental Research Center, Inc.
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Telephone: 619-500-3090
6 Facsimile: 706-858-0326

7 Attorney for Plaintiff Environmental Research Center, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

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

14 **Plaintiff,**

15 **v.**

16 **ELEMIS LTD, a United Kingdom limited**
17 **company; ELEMIS USA, INC., a Florida**
18 **corporation; STEINER LEISURE LIMITED,**
19 **a Commonwealth of the Bahamas limited**
20 **company; and DOES 1-100**

21 **Defendants.**

CASE NO.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES**

[Miscellaneous Civil Complaint (42)
Proposition 65, Health & Safety Code
Section 25249.5 et seq.]

22 Plaintiff Environmental Research Center, Inc. hereby alleges:

23 **I**

24 **INTRODUCTION**

25 1. Plaintiff Environmental Research Center, Inc. (hereinafter "Plaintiff" or "ERC") brings
26 this action as a private attorney general enforcer and in the public interest pursuant to Health &
27 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement Act
28 of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as "Proposition 65," mandates
that businesses with ten or more employees must provide a "clear and reasonable warning" prior to

1 exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity.
2 Lead is a chemical known to the State of California to cause cancer, birth defects and other
3 reproductive harm. This complaint seeks injunctive and declaratory relief and civil penalties to
4 remedy the ongoing failure of Defendants Elemis Ltd, Elemis USA, Inc., Steiner Leisure Limited
5 (hereinafter individually referred to as "Defendant" and collectively as "Defendants") and Does 1-
6 100 to warn consumers that they have been exposed to lead from several of Defendants' nutritional
7 health products at levels exceeding the Maximum Allowable Dose Level ("MADL") per day and
8 requiring a warning pursuant to Health & Safety Code section 25249.6.

9 II

10 PARTIES

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

15 3. Defendants Elemis Ltd, Elemis USA, Inc., and Steiner Leisure Limited are businesses that
16 develop, manufacture, market, distribute and/or sell nutritional health products that have exposed
17 users to lead in the State of California within the relevant statute of limitations period. These
18 "Covered Products" are:

- 19 • Elemis Sp@home Vitality Body Enhancement Capsules - Lead
- 20 • Elemis Invigorating Cal-Metab Plus Body Performance - Lead
- 21 • Elemis Contouring Silhouette Body Performance - Lead
- 22 • Elemis Cleansing Deep Drainage Body Performance - Lead

23 Defendants are each a company subject to Proposition 65 as each employs ten or more persons, and
24 have employed ten or more persons at all times relevant to this action.

25 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and
26 capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each of
27 said Does is responsible, in some actionable manner, for the events and happenings hereinafter
28 referred to, either through said Defendant's conduct, or through the conduct of its agents, servants or

1 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
2 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint
3 to set forth the same.

4 III

5 JURISDICTION AND VENUE

6 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10
7 which grants the Superior Court original jurisdiction in all causes except those given by statute to
8 other trial courts. The statute under which this action is brought does not specify any other basis for
9 jurisdiction.

10 6. This Court has jurisdiction over Defendants because Defendants are businesses having
11 sufficient minimum contacts with California, or otherwise intentionally availing themselves of the
12 California market through the marketing, distribution, and/or sale of the Covered Products in the
13 State of California to render the exercise of jurisdiction over them by the California courts consistent
14 with traditional notions of fair play and substantial justice.

15 7. The Complaint is based on allegations contained in a Notice of Violation dated April
16 28, 2017, served on the California Attorney General, other public enforcers, and Defendants. The
17 Notice of Violation constitutes adequate notice to Defendants because it provided adequate
18 information to allow Defendants to assess the nature of the alleged violations, consistent with
19 Proposition 65 and its implementing regulations. The Notice of Violation was accompanied by
20 a certificate of merit and a certificate of service, both of which comply with Proposition 65 and
21 its implementing regulations. The Notice of Violation served on Defendants also included a copy
22 of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."
23 Service of the Notice of Violation and accompanying documents complied with Proposition 65
24 and its implementing regulations. A true and correct copy of the Notice of Violation and
25 associated documents served on Defendants is attached hereto as **Exhibit A**. More than 60 days
26 have passed since the Notice of Violation was mailed and no public enforcement entity has filed
27 a complaint in this case.

28 8. This Court is the proper venue for the action because the causes of action have arisen in

1 the County of Alameda where some of the violations of law have occurred, and will continue to
2 occur due to the ongoing sales of Defendants' products. Furthermore, venue is proper in this Court
3 under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

4 IV

5 STATUTORY BACKGROUND

6 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
7 passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.

8 10. The warning requirement of Proposition 65 is contained in Health & Safety Code section
9 25249.6, which provides:

10 No person in the course of doing business shall knowingly and intentionally expose any
11 individual to a chemical known to the state to cause cancer or reproductive toxicity without
12 first giving clear and reasonable warning to such individual, except as provided in Section
13 25249.10.

14 11. Implementing regulations for Proposition 65 define expose as "to cause to ingest, inhale,
15 contact via body surfaces or otherwise come into contact with a listed chemical." An individual
16 may come into contact with a listed chemical through water, air, food, consumer products and any
17 other environmental exposure as well as occupational exposures." (Cal. Code Regs., tit. 27, § 25102,
18 subd. (i).)

19 12. In this case, the exposures at issue are caused by consumer products. Implementing
20 regulations for Proposition 65 define a consumer product exposure as "an exposure which results
21 from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of
22 a consumer good, or any exposure that results from receiving a consumer service." (Cal. Code
23 Regs., tit. 27, § 25602, subd. (b).)

24 13. Whenever a clear and reasonable warning is required under Health & Safety Code
25 section 25249.6, the "method employed to transmit the warning must be reasonably calculated
26 considering the alternative methods available under the circumstances, to make the warning
27 message available prior to exposure." (Cal. Code Regs., tit. 27, § 25601.) The warning requirement
28 may be satisfied by a warning that appears on a product's label or other labeling, shelf labeling,
signs, a system of signs, public advertising identifying the system and toll-free information services,

1 or any other system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §
2 25603.1, subd. (a)-(d).)

3 14. Proposition 65 establishes a procedure by which the State is to develop a list of
4 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
5 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
6 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

7 15. Lead was listed as a chemical known to the State of California to cause
8 developmental toxicity in the fetus and male and female reproductive toxicity on February 27,
9 1987. Lead was listed as a chemical known to the State of California to cause cancer on October
10 1, 1992. (State of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of
11 1986 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL
12 for lead as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal.
13 Code Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is
14 15 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

15 16. Proposition 65 provides that any “person who violates or threatens to violate” the
16 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase
17 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
18 probability that a violation will occur” (H&S Code §25249.11(e)). Violators are liable for civil
19 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

20 17. Proposition 65 may be enforced by any person in the public interest who provides notice
21 sixty days before filing suit to both the violator and designated law enforcement officials. The
22 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
23 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

24 V

25 STATEMENT OF FACTS

26 18. Defendants have developed, manufactured, marketed, distributed and/or sold the
27 Covered Products containing lead into the State of California. Consumption of the Covered
28 Products according to the directions and/or recommendations provided for said product causes

1 consumers to be exposed to lead at levels exceeding the 0.5 micrograms per day MADL and
2 requiring a warning. Consumers have been ingesting these products for many years, without any
3 knowledge of their exposure to lead, a very dangerous chemical.

4 19. For many years, Defendants have knowingly and intentionally exposed numerous
5 persons to lead without providing a Proposition 65 warning. Prior to ERC's Notice of Violation,
6 Defendants failed to provide a warning on the labels of the Covered Products. Defendants have at
7 all times relevant hereto been aware that the Covered Products contained lead and that persons using
8 these products have been exposed to this chemical. Defendants have been aware of the lead in the
9 Covered Products and has failed to disclose the presence of this chemical to the public, who
10 undoubtedly believe they have been ingesting totally healthy and pure products.

11 20. Both prior and subsequent to ERC's Notice of Violation, Defendants failed to provide
12 consumers of the Covered Products with a clear and reasonable warning that they have been exposed
13 to a chemical known to the State of California to cause cancer, birth defects and other reproductive
14 harm. This failure to warn is ongoing.

15 **FIRST CAUSE OF ACTION**

16 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear**
17 **and Reasonable Warning under Proposition 65)**

18 21. ERC refers to paragraphs 1-20, inclusive, and incorporates them herein by this reference.

19 22. By committing the acts alleged above, Defendants have, in the course of doing business,
20 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to the
21 State of California to cause cancer, birth defects and other reproductive harm without first giving
22 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code
23 section 25249.6. In doing so, Defendants have violated Health & Safety Code section 25249.6, and
24 continues to violate the statute with each successive sale of the Covered Products.

25 23. Said violations render Defendants liable for civil penalties up to \$2,500 per day, for
26 each violation, and subject Defendants to injunction.

27 **SECOND CAUSE OF ACTION**

28 **(Declaratory Relief)**

1 24. ERC refers to paragraphs 1-23, inclusive, and incorporates them herein by this reference.

2 25. There exists an actual controversy relating to the legal rights and duties of the parties,
3 within the meaning of Code of Civil Procedure section 1060, between ERC and Defendants
4 concerning whether Defendants have exposed individuals to a chemical known to the State of
5 California to cause cancer, birth defects and other reproductive harm without providing clear and
6 reasonable warning.

7 **VI**

8 **PRAYER**

9 WHEREFORE ERC prays for relief as follows:

10 1. On the First Cause of Action, for civil penalties for each and every violation according
11 to proof;

12 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
13 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive orders,
14 or other orders as are necessary to prevent Defendants from exposing persons to lead without
15 providing clear and reasonable warning;

16 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
17 Procedure section 1060 declaring that Defendants have exposed individuals to a chemical known to
18 the State of California to cause birth defects and other reproductive harm without providing clear
19 and reasonable warning; and

20 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
21 Procedure section 1021.5 or the substantial benefit theory;

22 5. For costs of suit herein; and

23 6. For such other relief as the Court may deem just and proper.

24
25 DATED: October 20, 2017

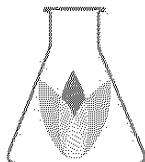
ENVIRONMENTAL RESEARCH CENTER, INC.

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28 Anne Barker
In-House Counsel for Plaintiff

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EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

April 28, 2017

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Elemis Ltd
Elemis USA, Inc.
Steiner Leisure Limited

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. Elemis Sp@home Vitality Body Enhancement Capsules - Lead
2. Elemis Invigorating Cal-Metab Plus Body Performance - Lead
3. Elemis Contouring Silhouette Body Performance - Lead
4. Elemis Cleansing Deep Drainage Body Performance - Lead

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

April 28, 2017

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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.

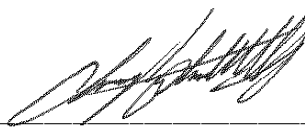
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 28, 2014, 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 Violators violated Proposition 65 because they failed to provide persons handling and/or using 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 an expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Elemis Ltd, Elemis USA, Inc., Steiner Leisure Limited and their Registered Agents for Service of Process only)

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

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

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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Elemis Ltd; Elemis USA, Inc.; and Steiner Leisure Limited

I, Chris Heptinstall, declare:

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

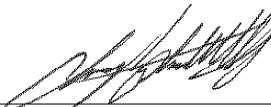
2. I am the Executive Director for the noticing party.

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

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

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

Dated: April 28, 2017



Chris Heptinstall

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

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CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within entitled action. 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 April 28, 2017, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Elemis Ltd
2 Lancashire Court
London
W1S 1EX
England

Current President or CEO
Elemis Ltd
1 Baker Street
London
W1U 8ED
England

Current President or CEO
Elemis Ltd
92 Uxbridge Road
Harrow
HA3 6DQ
England

Current President or CEO
Elemis Ltd
300 Nixon Lane
Edison, NJ 08837

Current President or CEO
Elemis USA, Inc.
300 Nixon Lane
Edison, NJ 08837

Current President or CEO
Steiner Leisure Limited
300 Nixon Lane
Edison, NJ 08837

Current President or CEO
Elemis Ltd
770 South Dixie Hwy, #200
Coral Gables, FL 33146

Current President or CEO
Elemis USA, Inc.
770 South Dixie Hwy, #200
Coral Gables, FL 33146

Current President or CEO
Steiner Leisure Limited
770 South Dixie Hwy, #200
Coral Gables, FL 33146

Current President or CEO
Steiner Leisure Limited
Suite 104A, Saffrey Square
PO Box N-9306
Nassau, The Bahamas

Corporation Service Company
(Elemis USA, Inc.'s Registered Agent
for Service of Process)
1201 Hays Street
Tallahassee, FL 32301

Corporation Service Company
(Elemis USA, Inc.'s Registered Agent
for Service of Process)
80 State Street
Albany, NY 12207

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

April 28, 2017

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On April 28, 2017, 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 April 28, 2017, 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:

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

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

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

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

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

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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 April 28, 2017, 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 Priority Mail.

Executed on April 28, 2017, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

April 28, 2017

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92401	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Shasta County 1355 West Street Redding, CA 96001	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701		

27 CCR Appendix A

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. Please refer to the statute and OEHHA's 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 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 say 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 Periods. 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.

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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

The notice is reproduced here:

Page 1

Date: April 28, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**

Page 2

Date: April 28, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108
Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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>.

² See Section 25501(a)(4).

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.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

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