

1 RICHARD T. DRURY (CBN 163559)
RICHARD M. FRANCO (CBN 170970)
2 LOZEAU | DRURY LLP
3 410 12th Street, Suite 250
Oakland, CA 94607
4 Ph: 510-836-4200
Fax: 510-836-4205
5 Email: richard@lozeaudrury.com
rick@lozeaudrury.com

6 Attorneys for Plaintiff
7 ENVIRONMENTAL RESEARCH CENTER, INC.

8 MICHAEL B. FISHER (CBN 203620)
9 BUCHALTER NEMER
10 1000 Wiltshire Boulevard, #1500
Los Angeles, CA 90017
Telephone: (213) 891-0700
11 Facsimile: (213) 896-0400
Email: mbfisher@buchalter.com

12 Attorney for Defendants IMMUNOTEC, INC.,
13 IMMUNOTEC RESEARCH, INC. and IMMUNOTEC
14 RESEARCH LTD.

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

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

20 Plaintiff,

21 v.

22 IMMUNOTEC, INC., a Canadian
23 Corporation, IMMUNOTEC RESEARCH,
24 INC., a Delaware corporation, and
IMMUNOTEC RESEARCH LTD., a
Canadian Limited Liability Company,

25 Defendants.

CASE NO. RG15793605

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 17, 2015

Trial Date: None set

27 **1. INTRODUCTION**

28 1.1 On November 17, 2015, Plaintiff Environmental Research Center, Inc.

1 (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this
2 action by filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”)
3 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
4 (“Proposition 65”), against IMMUNOTEC, INC., IMMUNOTEC RESEARCH, INC., and
5 IMMUNOTEC RESEARCH LTD. (collectively “IMMUNOTEC”). In this action, ERC
6 alleges that a number of products manufactured, distributed or sold by IMMUNOTEC contain
7 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
8 consumers to this chemical at a level requiring a Proposition 65 warning. These products
9 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
10 Products”) are:

- 11 a. **Immunotec Research Inc. Immunotec Thermal Action**
- 12 b. **Immunotec Research Inc. Immunotec MiForm Shake Vanilla**
- 13 c. **Immunotec Research Inc. Immunotec MiForm Shake Chocolate**

14 1.2 ERC and IMMUNOTEC are hereinafter referred to individually as a “Party”
15 or collectively as the “Parties.”

16 1.3 ERC is a California non-profit corporation dedicated to, among other causes,
17 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
18 and toxic chemicals, facilitating a safe environment for consumers and employees, and
19 encouraging corporate responsibility.

20 1.4 For purposes of this Consent Judgment, the Parties agree that IMMUNOTEC is a
21 business entity that has employed ten or more persons at all times relevant to this action, and
22 qualifies as a “person in the course of business” within the meaning of Proposition 65.
23 IMMUNOTEC manufactures, distributes and sells the Covered Products.

24 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation
25 dated August 28, 2015 that was served on the California Attorney General, other public
26 enforcers, and IMMUNOTEC (“Notice”). A true and correct copy of the Notice is attached as
27 **Exhibit A** and is hereby incorporated by reference. More than 60 days have passed since the
28 Notice was mailed and uploaded to the Attorney General’s website, and no designated

1 governmental entity has filed a complaint against IMMUNOTEC with regard to the Covered
2 Products or the alleged violations.

3 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
4 persons in California to lead without first providing clear and reasonable warnings in violation
5 of California Health and Safety Code section 25249.6. IMMUNOTEC denies all material
6 allegations contained in the Notice and Complaint.

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

17 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
19 other or future legal proceeding unrelated to these proceedings.

20 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
21 a Judgment by this Court.

22 **2. JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment and any further court action that may become
24 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
25 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
26 over IMMUNOTEC as to the acts alleged in the Complaint, that venue is proper in Alameda
27 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
28 resolution of all claims up through and including the Effective Date which were or could have

1 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

4 **3.1** Beginning on the Effective Date, IMMUNOTEC shall be permanently enjoined
5 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 which exposes a
7 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per day of lead when
8 the maximum suggested dose is taken as directed on the Covered Product's label, unless it
9 meets the warning requirements under Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
11 of California" shall mean to directly ship a Covered Product into California for sale in
12 California or to sell a Covered Product to a distributor that IMMUNOTEC knows will sell the
13 Covered Product in California.

14 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
15 Level" shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the largest number of servings in a recommended dosage
19 appearing on the product label), which equals micrograms of lead exposure per day.

20 **3.2 Clear and Reasonable Warnings**

21 If IMMUNOTEC is required to provide a warning pursuant to Section 3.1, the following
22 warning must be utilized:

23 **WARNING: This product contains lead, a chemical known to the State of California**
24 **to cause [cancer and] birth defects or other reproductive harm.**

25 IMMUNOTEC shall use the phrase "cancer and" in the warning only if the maximum daily dose
26 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
27 the quality control methodology set forth in Section 3.4.

1 The warning shall be securely affixed to or printed upon the container or label of each
2 Covered Product. In the alternative, for Covered Products sold over IMMUNOTEC's website,
3 the warning shall appear on IMMUNOTEC's checkout page on its website for California
4 consumers identifying any Covered Product, and also appear prior to completing checkout on
5 IMMUNOTEC's website when a California delivery address is indicated for any purchase of any
6 Covered Product.

7 The warning shall be at least the same size as the largest of any other health or safety
8 warnings also appearing on its website or on the label or container of IMMUNOTEC's product
9 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other
10 statements about Proposition 65 or lead may accompany the warning.

11 IMMUNOTEC must display the above warnings with such conspicuousness, as compared
12 with other words, statements, or design of the label or container, as applicable, to render the
13 warning likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use of the product.

15 **3.3 Reformulated Covered Products**

16 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
17 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
18 contains no more than 0.5 micrograms of lead per day as determined by the quality control
19 methodology described in Section 3.4.

20 **3.4 Testing and Quality Control Methodology**

21 **3.4.1** Beginning within one year of the Effective Date, IMMUNOTEC shall
22 arrange for lead testing of the Covered Products at least once a year for a minimum of five
23 consecutive years by arranging for testing of five randomly selected samples of each of the
24 Covered Products, in the form intended for sale to the end-user, which IMMUNOTEC intends
25 to sell or is manufacturing for sale in California, directly selling to a consumer in California or
26 "Distributing into California." The testing requirement does not apply to any of the Covered
27 Products for which IMMUNOTEC has provided the warning specified in Section 3.2. If tests
28 conducted pursuant to this Section demonstrate that no warning is required for a Covered

1 Product during each of five consecutive years, then the testing requirements of this Section will
2 no longer be required as to that Covered Product. However, if during or after the five-year
3 testing period, IMMUNOTEC changes ingredient suppliers for any of the Covered Products
4 and/or reformulates any of the Covered Products, IMMUNOTEC shall test that Covered
5 Product annually for at least four (4) consecutive years after such change is made.

6 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level”, the highest
7 lead detection result of the five (5) randomly selected samples of the Covered Products will be
8 controlling.

9 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
10 laboratory method that complies with the performance and quality control factors appropriate
11 for the method used, including limit of detection, qualification, accuracy, and precision that
12 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
13 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
14 method subsequently agreed to in writing by the Parties.

15 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
16 independent third party laboratory certified by the California Environmental Laboratory
17 Accreditation Program or an independent third-party laboratory that is registered with the
18 United States Food & Drug Administration.

19 **3.4.5** Nothing in this Consent Judgment shall limit IMMUNOTEC’s ability to
20 conduct, or require that others conduct, additional testing of the Covered Products, including
21 the raw materials used in their manufacture.

22 **3.4.6** Beginning on the Effective Date and continuing for a period of five
23 years, IMMUNOTEC shall arrange for copies of all laboratory reports with results of testing
24 for lead content under Section 3.4.1 to be automatically sent by the testing laboratory directly
25 to ERC within ten days after completion of the testing. IMMUNOTEC shall retain all test
26 results and documentation for a period of five years from the date of each test.

27 **4. SETTLEMENT PAYMENT**

28 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil

1 penalties, attorney's fees, and costs, IMMUNOTEC shall make a total payment of \$95,000.00
2 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. IMMUNOTEC shall
3 make this payment by wire transfer to ERC's escrow account, for which ERC will give
4 IMMUNOTEC the necessary account information. The Total Settlement Amount shall be
5 apportioned as follows:

6 **4.2** \$31,988.00 shall be considered a civil penalty pursuant to California Health and
7 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$23,991.00) of the civil penalty to the
8 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
9 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
10 Code §25249.12(c). ERC will retain the remaining 25% (\$7,997.00) of the civil penalty.

11 **4.3** \$1,455.99 shall be distributed to ERC as reimbursement to ERC for reasonable
12 costs incurred in bringing this action.

13 **4.4** \$31,988.60 shall be distributed to ERC in lieu of further civil penalties, for the
14 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
15 includes work, analyzing, researching and testing consumer products that may contain
16 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
17 the subject matter of the current action; (2) the continued monitoring of past consent judgments
18 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
19 donation of \$1,600.00 to the As You Sow to address reducing toxic chemical exposures in
20 California.

21 **4.5** \$16,281.75 shall be distributed to Lozeau Drury LLP as reimbursement of
22 ERC's attorney's fees, while \$13,285.66 shall be distributed to ERC for its in-house legal fees.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
25 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
26 judgment.

27 **5.2** If IMMUNOTEC seeks to modify this Consent Judgment under Section 5.1,
28 then IMMUNOTEC must provide written notice to ERC of its intent ("Notice of Intent"). If

1 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
2 ERC must provide written notice to IMMUNOTEC within thirty days of receiving the Notice of
3 Intent. If ERC notifies IMMUNOTEC in a timely manner of ERC's intent to meet and confer,
4 then the Parties shall meet and confer in good faith as required in this Section. The Parties
5 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
6 to meet and confer. Within thirty days of such meeting, if ERC disputes the proposed
7 modification, ERC shall provide to IMMUNOTEC a written basis for its position. The Parties
8 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
9 remaining disputes. Should it become necessary, the Parties may agree in writing to different
10 deadlines for the meet-and-confer period.

11 **5.3** In the event that IMMUNOTEC initiates or otherwise requests a modification
12 under Section 5.1, and the meet and confer process leads to a joint motion or application of the
13 Consent Judgment, IMMUNOTEC shall reimburse ERC its costs and reasonable attorney's
14 fees for the time spent in the meet-and-confer process and filing and arguing the motion or
15 application.

16 **5.4** Where the meet-and-confer process does not lead to a joint motion or
17 application in support of a modification of the Consent Judgment, then either Party may seek
18 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
19 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
20 means a party who is successful in obtaining relief more favorable to it than the relief that the
21 other party was amenable to providing during the Parties' good faith attempt to resolve the
22 dispute that is the subject of the modification.

23 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
24 **JUDGMENT**

25 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
26 this Consent Judgment.

27 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
28 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall

1 inform IMMUNOTEC in a reasonably prompt manner of its test results, including information
2 sufficient to permit IMMUNOTEC to identify the Covered Products at issue. IMMUNOTEC
3 shall, within thirty days following such notice, provide ERC with testing information, from an
4 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
5 demonstrating IMMUNOTEC's compliance with the Consent Judgment, if warranted. The
6 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

7 **7. APPLICATION OF CONSENT JUDGMENT**

8 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
9 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
10 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
11 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
12 application to Covered Products which are distributed or sold exclusively outside the State of
13 California and which are not used by California consumers.

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

15 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
16 behalf of itself and in the public interest, and IMMUNOTEC and its respective officers,
17 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
18 suppliers, franchisees, licensees, customers (not including private label customers of
19 IMMUNOTEC), distributors, wholesalers, retailers, and all other upstream and downstream
20 entities in the distribution chain of any Covered Product, and the predecessors, successors and
21 assigns of any of them (collectively, "Released Parties"), from any and all claims, actions,
22 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
23 asserted, or that could have been asserted from the handling, use, or consumption of the
24 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
25 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
26 lead up to and including the Effective Date.

27 **8.2** ERC on its own behalf only, on one hand, and IMMUNOTEC on its own behalf
28 only, on the other, further waive and release any and all claims they may have against each

1 other for all actions or statements made or undertaken in the course of seeking or opposing
2 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
3 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
4 any Party's right to seek to enforce the terms of this Consent Judgment.

5 **8.3** It is possible that other claims not known to the Parties arising out of the facts
6 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
7 discovered. ERC on behalf of itself only, on one hand, and IMMUNOTEC, on the other hand,
8 acknowledge that this Consent Judgment is expressly intended to cover and include all such
9 claims up through the Effective Date, including all rights of action therefore. ERC and
10 IMMUNOTEC acknowledge that the claims released in Sections 8.1 and 8.2 above may
11 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
12 such unknown claims. California Civil Code section 1542 reads as follows:

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

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

21 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
22 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
23 in the Covered Products as set forth in the Notice and the Complaint.

24 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
25 environmental exposures arising under Proposition 65, nor shall it apply to any of
26 IMMUNOTEC's products other than the Covered Products.

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1 **10. GOVERNING LAW**

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

4 **11. PROVISION OF NOTICE**

5 All notices required to be given to either Party to this Consent Judgment by the other shall
6 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
7 email may also be sent.

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

9 Chris Heptinstall, Executive Director, Environmental Research Center
10 3111 Camino Del Rio North, Suite 400
11 San Diego, CA 92108
12 Tel: (619) 500-3090
13 Email: chris_erc501c3@yahoo.com

14 With a copy to:

15 RICHARD T. DRURY
16 RICHARD M. FRANCO
17 LOZEAU | DRURY LLP
18 410 12th Street, Suite 250
19 Oakland, CA 94607
20 Ph: 510-836-4200
21 Fax: 510-836-4205
22 Email: richard@lozeaudrury.com
23 rick@lozeaudrury.com

24 **IMMUNOTEC, INC.,
25 IMMUNOTEC RESEARCH, INC. and IMMUNOTEC RESEARCH LTD.**

26 David Pelletier
27 Vice-President Regulatory Affairs, Quality Control & Product Development
28 300 Joseph Carrier, Vaudreuil, QC, J7V 5V5

With a copy to:

MICHAEL B. FISHER
BUCHALTER NEMER
1000 Wiltshire Boulevard, #1500
Los Angeles, CA 90017
Telephone: (213) 891-0700
Facsimile: (213) 896-0400
Email: mbfisher@buchalter.com

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2 **12. COURT APPROVAL**

3 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
4 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
5 Consent Judgment.

6 12.2 If the California Attorney General objects to any term in this Consent Judgment,
7 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
8 prior to the hearing on the motion.

9 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
10 void and have no force or effect.

11 **13. EXECUTION AND COUNTERPARTS**

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

15 **14. DRAFTING**

16 The terms of this Consent Judgment have been reviewed by the respective counsel for each
17 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
18 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
19 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
20 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
21 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
22 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
23 equally in the preparation and drafting of this Consent Judgment.

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

25 If a dispute arises with respect to either Party's compliance with the terms of this Consent
26 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
27 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
28 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is

1 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
2 used in the preceding sentence, the term "prevailing party" means a party who is successful in
3 obtaining relief more favorable to it than the relief that the other party was amenable to providing
4 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
5 action.

6 **16. ENTIRE AGREEMENT, AUTHORIZATION**

7 **16.1** This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter herein, and any and all
9 prior discussions, negotiations, commitments and understandings related hereto. No
10 representations, oral or otherwise, express or implied, other than those contained herein have
11 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
12 herein, shall be deemed to exist or to bind any Party.

13 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
15 explicitly provided herein, each Party shall bear its own fees and costs.

16 **17. PUBLICATION**

17 Each signatory to this Consent Judgment agrees that they shall refrain from publishing
18 the existence or contents of this Consent Judgment. It is expressly understood that this Consent
19 Judgment shall be filed with the Court and forwarded to the appropriate state agencies. Each
20 signatory shall endeavor to limit the dissemination of information regarding this Consent
21 Judgment to that which is strictly necessary to ensure entry of the Consent Judgment by the
22 Court.

23 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND**
24 **ENTRY OF CONSENT JUDGMENT**

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

28 (1) Find that the terms and provisions of this Consent Judgment represent a fair and

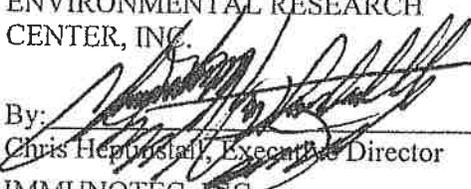
1 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
2 been diligently prosecuted, and that the public interest is served by such settlement; and

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

5
6 **IT IS SO STIPULATED:**

7 Dated: 6/21, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

8
9 By: 
Chris Heppinstall, Executive Director
IMMUNOTEC, INC.

10 Dated: 6/30, 2016

11 Charles L. Orr
12 By: Charles L. Orr
13 Its: C.E.O.

14 Dated: 7/4, 2016

IMMUNOTEC, RESEARCH, INC.

15 Charles L. Orr
16 By: Charles L. Orr
17 Its: President

18 Dated: 7/4, 2016

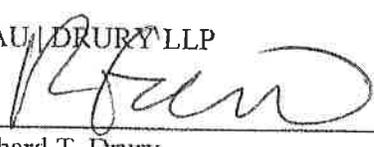
IMMUNOTEC, RESEARCH LTD.

19 Charles L. Orr
20 By: Charles L. Orr
21 Its: President

22 **APPROVED AS TO FORM:**

23 Dated: 6/21, 2016

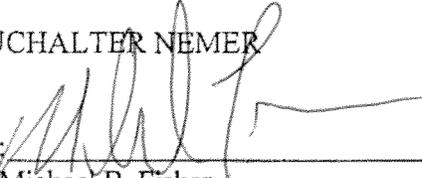
LOZEAU, DRURY LLP

24 By: 
25 Richard T. Drury
26 Richard M. Franco
27 Attorneys for Plaintiff Environmental
28 Research Center, Inc.

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Dated: 7/4, 2016

BUCHALTER NEMER

By: 

Michael B. Fisher
Attorneys for Defendants Immunotec, Inc.,
Immunotec Research, Inc. and Immunotec
Research Ltd.

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: _____, 2016

Judge of the Superior Court

EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Immunotec Inc.
300 Joseph Carrier
Vaudreuil-Dorion, Quebec J7V 5V5
Canada

Current CEO or President
Immunotec Inc.
5895 Rickenbacker Road
Commerce, CA 90040

Current CEO or President
Immunotec Inc.
3 Label Lane
Swanton, Vermont 05488

Current CEO or President
Immunotec Inc.
445 South Royal Lane, Suite 800
Coppell, TX 75019

Current CEO or President
Immunotec Research Inc.
300 Joseph Carrier
Vaudreuil-Dorion, Quebec J7V 5V5
Canada

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Immunotec Research Inc.
5895 Rickenbacker Road
Commerce, CA 90040

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3 Label Lane
Swanton, Vermont 05488

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Coppell, TX 75019

Current CEO or President
Immunotec Research Ltd.
300 Joseph Carrier
Vaudreuil-Dorion, Quebec J7V 5V5
Canada

Current CEO or President
Immunotec Research Ltd.
5895 Rickenbacker Road
Commerce, CA 90040

Current CEO or President
Immunotec Research Ltd.
3 Label Lane
Swanton, Vermont 05488

Current CEO or President
Immunotec Research Ltd.
445 South Royal Lane, Suite 800
Coppell, TX 75019

Paracorp Incorporated
(Immunotec Research Inc.'s
Registered Agent for Service of Process)
2804 Gateway Oaks Drive, #200
Sacramento, CA 95833

Corporation Service Company
(Immunotec Research Inc.'s
Registered Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Immunotec Inc.
Immunotec Research Inc.
Immunotec Research Ltd.**

The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **Immunotec Research Inc. Immunotec Thermal Action - Lead**
- **Immunotec Research Inc. Immunotec MiForm Shake Vanilla - Lead**
- **Immunotec Research Inc. Immunotec MiForm Shake Chocolate - 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.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

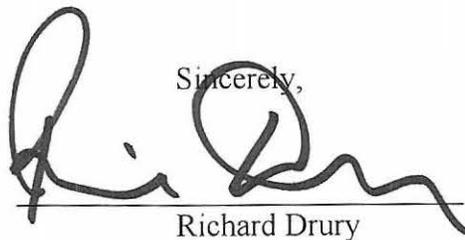
August 28, 2015

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The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since August 28, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Immunotec Inc., Immunotec Research Inc., Immunotec Research Ltd., and their Registered Agents for Service of Process only)

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

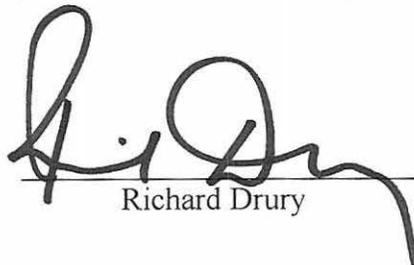
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Immunotec Inc., Immunotec Research Inc., and Immunotec Research Ltd.

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: August 28, 2015


Richard Drury

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 August 28, 2015, 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 the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Immunotec Inc.
300 Joseph Carrier
Vaudreuil-Dorion, Quebec J7V 5V5
Canada

Current CEO or President
Immunotec Research Inc.
445 South Royal Lane, Suite 800
Coppell, TX 75019

Current CEO or President
Immunotec Inc.
5895 Rickenbacker Road
Commerce, CA 90040

Current CEO or President
Immunotec Research Ltd.
300 Joseph Carrier
Vaudreuil-Dorion, Quebec J7V 5V5
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Registered Agent for Service of Process)
2804 Gateway Oaks Drive, #200
Sacramento, CA 95833

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Wilmington, DE 19808

August 28, 2015

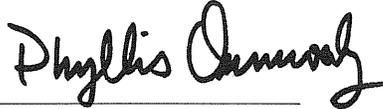
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On August 28, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On August 28, 2015, 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 August 28, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2nd Street Woodland, CA 95695
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Nevada County 2201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	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, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009	
District Attorney, Los Angeles County 210 West Temple Street, Suite 1800 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'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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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 "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that 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

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>.

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 this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 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 a 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 a Food. Certain exposures to chemicals that occur in foods naturally (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 into 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 the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an 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.

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: July, 2012

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