

1 WILLIAM VERICK, SBN 140972
Klamath Environmental Law Center
2 1125 Sixteenth Street, Suite 204
Arcata, CA 95521
3 Telephone: (707) 630-5061
Facsimile: (707) 630-5064
4 E-Mail wverick@igc.org

5 DAVID WILLIAMS, CSB #144479
BRIAN ACREE, CSB #202505
6 1839 Ygnacio Valley Rd., Suite 351
Walnut Creek, CA 94598
7 Telephone: (510) 847-2356
Email: dhwill7@gmail.com
8 Email: brian@brianacree.com

9 Attorneys for Plaintiff,
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 LOS ANGELES COUNTY
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

15 Plaintiff,

16 v.

18 ALFRED, INC.,

19 Defendant.

CASE NO. **19STCV17117**

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

20 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

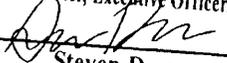
21 INTRODUCTION

22 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
23 failure of defendant ALFRED, INC. (hereinafter "Defendant"), to give clear and reasonable
24 warnings to those residents of California, who drink kombucha that defendant dispenses at retail
25 outlets it operates in California. Kombucha is a fermented tea drink that is dispensed through
26 taps at the retail outlets defendant operates. The equipment defendant uses to dispense the
27 kombucha it sells imparts lead to the kombucha. When people drink the kombucha, they drink
28

COMPLAINT FOR INJUNCTION
AND CIVIL PENALTIES

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 16 2019

Sherrri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

By Fax

1 lead. This causes an exposure to lead within the meaning of Health and Safety Code Section
2 25249.6.

3 2. Defendant sells kombucha throughout Southern California, including in Los
4 Angeles. Defendant's equipment imparts lead to the kombucha it sells and defendant intends
5 that people who purchase kombucha drink the lead-infused kombucha. This causes exposure to
6 lead, a chemical listed pursuant to 27 Cal. Code Regs. § 27001 as known to cause male and
7 female reproductive toxicity, as well as developmental toxicity.

8 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
9 to compel Defendant to bring its business practices into compliance with section 25249.5 et seq.
10 by providing a clear and reasonable warning to each individual who has been and who in the
11 future may be exposed to lead by drinking defendants' kombucha.

12 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
13 of Defendant to provide clear and reasonable warnings regarding exposure to a chemical known
14 to cause male and female reproductive toxicity, as well as developmental toxicity.

15 PARTIES

16 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
17 is a non-profit organization dedicated to, among other causes, the protection of the environment,
18 promotion of human health, environmental education, and consumer rights. Mateel is based in
19 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
20 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
21 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
22 California are exposed to lead when they drink lead-infused kombucha that defendants dispense
23 at retail outlets they operate in California.

24 6. Defendant is a person doing business within the meaning of Health & Safety Code
25 Section 25249.11. Defendant is a business that sells lead-infused kombucha in California,
26 including in Los Angeles County. Exposures at issue in this case occur in Los Angeles County.

27 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &
28 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of the

1 Notice of Violation letter, dated June 28, 2018, which Mateel sent to California's Attorney
2 General. A substantively identical letter was sent to the District Attorney of Los Angeles County
3 as well as to district attorneys for each of California's 58 counties and to the city attorneys for
4 every California city with a population greater than 750,000. Attached to the Notice of Violation
5 Letter sent to each defendant was a summary of Proposition 65 that was prepared by California's
6 Office of Environmental Health Hazard Assessment. In addition, each Notice of Violation Letter
7 plaintiff sent was accompanied by a Certificate of Service attesting to the service of the Notice of
8 Violation Letter on each entity that received it. Pursuant to California Health & Safety Code
9 Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis for the
10 action was also sent with each Notice of Violation Letter. Factual information sufficient to
11 establish the basis of the Certificate of Merit was enclosed with the Notice of Violation letter
12 Mateel sent to the Attorney General.

13 8. Defendant employs more than ten people.

14 JURISDICTION

15 9. The Court has jurisdiction over this action pursuant to California Health & Safety
16 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
17 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
18 of the Health & Safety Code, which contains the statutes under which this action is brought, does
19 not grant jurisdiction to any other trial court.

20 10. This Court also has jurisdiction over Defendant because it is a business that has
21 sufficient minimum contacts in California and within Los Angeles County. Defendant
22 intentionally availed itself of the legal protections offered by California and by Los Angeles
23 County by marketing its kombucha for consumption in Los Angeles, California. It is thus
24 consistent with traditional notions of fair play and substantial justice for the Los Angeles
25 Superior Court to exercise jurisdiction over Defendants.

26 11. Venue is proper in this Court because exposures to lead caused by defendant's
27 kombucha occurs in Los Angeles. Liability for Plaintiff's causes of action, or some parts thereof,
28 has accordingly arisen in Los Angeles during the times relevant to this Complaint and Plaintiff

1 seeks civil penalties imposed by statute.

2 FIRST CAUSE OF ACTION
3 (Claim for Injunctive Relief)

4 12. Plaintiff realleges and incorporates by reference into this First Cause of Action, as
5 if specifically set forth herein, paragraphs 1 through 11, inclusive.

6 13. The People of the State of California have declared by referendum under
7 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed
8 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

9 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
10 that businesses that knowingly and intentionally expose any individual to a chemical known to
11 the State of California to cause cancer or developmental toxicity must first provide a clear and
12 reasonable warning to such individual prior to the exposure.

13 15. Since at least three years prior to the Notice of Violation Letter, Defendant has
14 engaged in conduct that violates Health and Safety Code Section 25249.6 et seq. This conduct
15 includes knowingly and intentionally exposing to lead, those California residents who drink lead-
16 infused kombucha that defendants serve in retail outlets in California. Defendants has not
17 provided clear and reasonable warnings of the exposure within the meaning of Health & Safety
18 Code Sections 25249.6 and 25249.11.

19 16. At all times relevant to this action, Defendant knew that its kombucha was
20 causing exposures to lead. Prior to being served with the above-referenced Notice of Violation,
21 defendant was sent, and received, letters informing it that people who drink the kombucha
22 defendant serves are exposed to "the toxic heavy metal, lead." Defendant thus knew that their
23 kombucha contained lead and, in possession of that knowledge, defendant intended that residents
24 of California drink lead-infused kombucha.

25 17. By the above described acts, Defendant has violated Cal. Health & Safety Code
26 § 25249.6 and is therefore subject to an injunction ordering it to stop violating Proposition 65, to
27 provide warnings to all present and future customers who buy the kombucha Defendant
28 dispenses at the retail outlets it operates in California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION
(Claim for Civil Penalties)

18. Plaintiff realleges and incorporates by reference into this Second Cause of Action, as if specifically set forth herein, paragraphs 1 through 17, inclusive.

19. By the above described acts, Defendant is liable and should be liable pursuant to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500 per day for each individual exposed without proper warning to lead when these individuals drank defendant's lead-infused kombucha in California.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS, as follows:

1. Pursuant to the First Cause of Action, that Defendant be enjoined, restrained, and ordered to comply with the provisions of Section 25249.6 of the California Health & Safety Code;

2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section 25249.6 of the California Health & Safety Code, to lead when he or she drank defendants' lead-infused kombucha;

3. That, pursuant to Civil Procedure Code § 1021.5, Defendant be ordered to pay to Plaintiff the attorneys fees and costs it incurred in bringing this enforcement action.

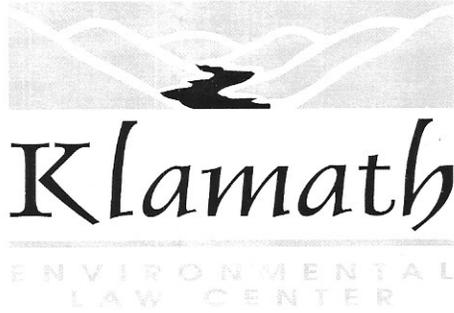
4. For such other relief as this court deems just and proper.

Dated: May 15, 2019

KLAMATH ENVIRONMENTAL LAW CENTER



By
William Verick
Attorney for Plaintiff
Mateel Environmental Justice Foundation



June 28, 2018

PROPOSITION 65 ENFORCEMENT REPORTING
ATTENTION: PROP 65 COORDINATOR
1515 CLAY STREET, SUITE 2000
P.O. BOX 70550
OAKLAND CA 94612-0550

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") give you notice that the private businesses listed on the accompanying service list ("businesses") have been, are, and threaten to be in violation of Cal. Health & Safety Code § 25249.6. Both this office and Mateel are private enforcers of Proposition 65, both may be contacted at the below listed address and telephone number, and I am a responsible individual at both Mateel and this office. The above referenced violations occur when California residents ingest kombucha served on tap at locations operated by the business or at locations operated by a business to whom another noticee business has sold kombucha. This kombucha is contaminated with lead, a chemical known to cause birth defects and other reproductive harm. When people ingest kombucha, they also ingest (and are therefore exposed to) lead. The route of exposure to lead from kombucha is, therefore, via the ingestion route of exposure. The businesses did not and do not provide people with clear and reasonable warnings before they expose California residents to lead in kombucha. These violations have occurred every day since at least June 28, 2015, and will continue every day until the lead stops being added to the kombucha, or until clear and reasonable warnings are given.

Cordially,

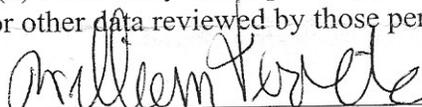
A handwritten signature in black ink, appearing to read "W. Verick", with a long horizontal flourish extending to the right.

William Verick

CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached notice(s) of violation in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings. I am the attorney for the noticing party. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the person(s) consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: June 28, 2018



William Verick

CERTIFICATE OF SERVICE

I, Matt Lang, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 1125 Sixteenth Street, Suite 204, Arcata, California, 95521. On June 28, 2018, I caused the attached NOTICE OF VIOLATION LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached NOTICE OF VIOLATION and PROPOSITION 65: A SUMMARY to be sent by Certified U.S. Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 28, 2018, at Arcata, California.



Matt Lang

SERVICE LIST

PROPOSITION 65 ENFORCEMENT REPORTING
ATTENTION: PROP 65 COORDINATOR
1515 CLAY STREET, SUITE 2000
POST OFFICE BOX 70550
OAKLAND, CA 94612-0550

OAKLAND CITY ATTORNEY
CITY HALL 6TH FLOOR
1 FRANK OGAWA PLAZA
OAKLAND, CA 94612

OFFICE OF THE CITY ATTORNEY
CITY OF SAN FRANCISCO
CITY HALL, ROOM 234
1 DR. CARLTON B. GOODLETT PLACE
SAN FRANCISCO, CA 94102-4682

OFFICE OF THE CITY ATTORNEY
CITY OF SACRAMENTO
915 I STREET, 4TH FLOOR
SACRAMENTO, CA 95814-2608

OFFICE OF THE CITY ATTORNEY
CITY OF SAN JOSE
200 EAST SANTA CLARA STREET
SAN JOSE, CA 95113

OFFICE OF THE CITY ATTORNEY
CITY OF LOS ANGELES
200 N. MAIN ST.
LOS ANGELES, CA 90012

OFFICE OF THE CITY ATTORNEY
CITY OF SAN DIEGO CONSUMER &
ENVIRONMENTAL PROTECTION
1200 THIRD AVENUE, SUITE 700
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ALAMEDA
1225 FALLON STREET ROOM 900
OAKLAND, CA 94612

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ALPINE
P.O. BOX 248
MARKLEEVILLE, CA 96120

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF AMADOR
708 COURT STREET
JACKSON, CA 95642

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF BUTTE
25 COUNTY CENTER DR.
OROVILLE, CA 95965

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF CALAVERAS
GOVERNMENT CENTER
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF COLUSA
547 MARKET STREET
COLUSA, CA 95932

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF CONTRA COSTA
P.O. BOX 670
MARTINEZ, CA 94553

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF DEL NORTE
450 H ST #171
CRESCENT CITY, CA 95531

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF EL DORADO
515 MAIN ST.
PLACERVILLE, CA 95667

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF FRESNO
2220 TULARE ST #1000
FRESNO, CA 93721

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF GLENN
P.O. BOX 430
WILLOWS, CA 95988

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF HUMBOLDT
825 5TH ST.
EUREKA, CA 95501

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF IMPERIAL
940 W. MAIN STREET, SUITE 102
EL CENTRO, CA 92243-2880

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF INYO
P.O. DRAWER D
INDEPENDENCE, CA 93526

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF KERN
1215 TRUXTUN AVE. FLOOR 4
BAKERSFIELD, CA 93301

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF KINGS
1400 W. LACEY BLVD.
HANFORD, CA 93230

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LAKE
255 N. FORBES ST # 424
LAKEPORT, CA 95453

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LASSEN
220 SOUTH LASSEN ST. STE 8
SUSANVILLE, CA 96130

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LOS ANGELES
HALL OF JUSTICE
211 W TEMPLE STREET STE 1200
LOS ANGELES, CA 90012

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MADERA
209 W. YOSEMITE AVE.
MADERA, CA 93637

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MARIN
HALL OF JUSTICE #183
SAN RAFAEL, CA 94903

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MARIPOSA
P.O. BOX 730
MARIPOSA, CA 95338

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MENDOCINO
PO BOX 1000
UKIAH, CA 95482

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MERCED
2222 M ST.
MERCED, CA 95340

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MODOC
204 SOUTH COURT STREET
ALTURAS, CA 96101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MONO
P.O. BOX 617
BRIDGEPORT, CA 93517

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MONTEREY
240 CHURCH STREET
P.O. BOX 1131
SALINAS, CA 93902

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF NAPA
931 PARKWAY MALL
P.O. BOX 720
NAPA, CA 94559-0720

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF NEVADA
201 COMMERCIAL STREET
NEVADA CITY, CA 95959

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ORANGE
401 CIVIC CENTER DR WEST
SANTA ANA, CA 92701

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLACER
10810 JUSTICE CENTER DR. STE 240
ROSEVILLE, CA 95678

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLUMAS
520 MAIN STREET #404
QUINCY, CA 95971

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE
3960 ORANGE ST.
RIVERSIDE, CA 92501

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SACRAMENTO
901 G STREET
SACRAMENTO, CA 95814

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BENITO
419 4TH ST
HOLLISTER, CA 95023

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BERNARDINO
316 MT. VIEW AVE.
SAN BERNARDINO, CA 92415-0004

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
330 W. BROADWAY, SUITE 1100
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN FRANCISCO
850 BRYANT ST #322
SAN FRANCISCO, CA 94103

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN JOAQUIN
222 E. WEBER AVE #202
STOCKTON, CA 95202

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
REDWOOD CITY, CA 94063

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA
1112 SANTA BARBARA ST.
SANTA BARBARA, CA 93101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CLARA
70 W. HEDDING ST.
SAN JOSE, CA 95110

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CRUZ
701 OCEAN ST. #200
SANTA CRUZ, CA 95060

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SHASTA
1355 WEST STREET
REDDING, CA 96001

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SIERRA
P.O. BOX 457
DOWNIEVILLE, CA 95936

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
P.O. BOX 986
YREKA, CA 96097

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO
600 UNION AVE
FAIRFIELD, CA 94533

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
SANTA ROSA, CA 95403

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF STANISLAUS
1100 I ST. #200
MODESTO, CA 95354

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SUTTER
1160 CIVIC CENTER BLVD. #A
YUBA CITY, CA 95993

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TEHAMA
P.O. BOX 519
REDBLUFF, CA 96080

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TRINITY
P.O. BOX 310
WEAVERVILLE, CA 96093

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE
COURTHOUSE #224
VISALIA, CA 93291

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TUOLUMNE
2 S. GREEN ST.
SONORA, CA 95370

VENTURA COUNTY DISTRICT ATTORNEY'S
OFFICE
800 SOUTH VICTORIA AVE
VENTURA, CA 93009

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
301 SECOND STREET
WOODLAND, CA 95695

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

GT DAVE, CEO
GT'S LIVING FOODS, LLC
4646 HAMPTON ST
VERNON CA 90058

BARNABY MONTGOMERY, CEO
YUMMY FOODS, LLC
3255 CAHUENGA BLVD WEST, SUITE 302
LOS ANGELES, CA 90068

JOSHUA AKHTARZAD, CEO
ALFRED INC.
11301 W OLYMPIC BLVD STE 206
LOS ANGELES CA 90064

JOSHUA AKHTARZAD, CEO
MELROSE PLACE COFFEE COMPANY
11301 W OLYMPIC BOULEVARD, SUITE 206
LOS ANGELES CA 90064

JOHN CHAE, CEO
GREENHOUSE JUICE, LLC
5235 LANKERSHIM BLVD
LOS ANGELES CA 91601