

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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Adam J. Frankel SBN 343594
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1939 Harrison St, Suite 150 Oakland, CA 94612
TELEPHONE NO.: 510-836-4200 FAX NO.:

FOR COURT USE ONLY
ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
01/11/2023 at 03:46:40 PM
By: Angela Linhares,
Deputy Clerk

ATTORNEY FOR (Name): Plaintiff Environmental Research Center, Inc. (ERC)
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda
STREET ADDRESS: 1225 Fallon Street
MAILING ADDRESS: 1225 Fallon Street
CITY AND ZIP CODE: Oakland, CA 94612
BRANCH NAME: Rene C. Davidson

CASE NAME:
Environmental Research Center, Inc. v. Black Rifle Coffee Company LLC et al.

CIVIL CASE COVER SHEET
[checked] Unlimited (Amount demanded exceeds \$25,000)
[] Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
[] Counter [] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 23CV025570
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
Auto Tort
Contract
Provisionally Complex Civil Litigation
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
Real Property
Enforcement of Judgment
Non-PI/PD/WD (Other) Tort
Unlawful Detainer
Miscellaneous Civil Complaint
Employment
Judicial Review
Miscellaneous Civil Petition

- 2. This case [] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [] Large number of separately represented parties
b. [] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. [] Substantial amount of documentary evidence
d. [] Large number of witnesses
e. [] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. [] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [checked] monetary b. [checked] nonmonetary; declaratory or injunctive relief c. [] punitive
4. Number of causes of action (specify): 2
5. This case [] is [checked] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: Adam J. Frankel (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: Environmental Research Center, Inc. v. Black Rifle Coffee Company LLC et al.	Case Number:
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CIVIL CASE COVER SHEET ADDENDUM

**THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

<input type="checkbox"/> Hayward Hall of Justice (447)	<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)
<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)	<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)
	Product liability (24)	<input type="checkbox"/> 89 Product liability (<u>not</u> asbestos or toxic tort/environmental) (G)
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G)
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)
		<input type="checkbox"/> 53 Labor comm award confirmation
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 04 Breach contract / Wrnty (G)
	Collections (09)	<input type="checkbox"/> 81 Collections (G)
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)
	Other real property (26)	<input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs
		Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture
	Petition re: arbitration award (11)	<input type="checkbox"/> 62 Pet. re: arbitration award
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review
		Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment
		<input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)
	Other complaint (42)	<input checked="" type="checkbox"/> 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name
		<input type="checkbox"/> 69 Other petition

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

BLACK RIFLE COFFEE COMPANY LLC, a Delaware limited liability company;
BRCC OPERATING COMPANY, a Delaware limited liability company;
BRC INC., a Delaware public benefit corporation; and DOES 1-100,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE): ENVIRONMENTAL RESEARCH CENTER, INC., a California non-profit corporation

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
01/11/2023
Chad Finke, Executive Officer / Clerk of the Court
By: A. Linhares Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Alameda County Superior Court

CASE NUMBER:
(Número del Caso): **23CV02570**

1225 Fallon Street Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Richard Drury / Adam J. Frankel, Lozeau Drury LLP. 1939 Harrison St, Suite 150, Oakland, CA 94612
Tel: (510) 836-4200 Fax:(510) 836-4205

DATE: January 11, 2023 Clerk, by A. Linhares , Deputy
(Fecha) 01/11/2023 Chad Finke, Executive Officer / Clerk of the Court (Secretario) A. Linhares (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
1. as an individual defendant.
 2. as the person sued under the fictitious name of (specify):
 3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
 4. by personal delivery on (date):

1 RICHARD T. DRURY (CBN 163559)
2 ADAM J. FRANKEL (CBN 343594)
3 LOZEAU | DRURY LLP
4 1939 Harrison Street, Suite 150
5 Oakland, CA 94612
6 Ph: 510-836-4200
7 Email: richard@lozeaudrury.com
8 adam@lozeaudrury.com

9 Attorneys for Plaintiff
10 Environmental Research Center, Inc.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
01/11/2023 at 03:46:40 PM
By: Angela Linhares,
Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

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

15 **Plaintiff,**

16 **vs.**

17 **BLACK RIFLE COFFEE COMPANY LLC,**
18 **a Delaware limited liability company; BRCC**
19 **OPERATING COMPANY, a Delaware**
20 **limited liability company; BRC INC., a**
21 **Delaware public benefit corporation; and**
22 **DOES 1-100,**

23 **Defendants.**

CASE NO.: 23CV025570

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES

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

24 Plaintiff Environmental Research Center, Inc. hereby alleges:

25 **I**

26 **INTRODUCTION**

27 1. Plaintiff Environmental Research Center, Inc. (hereinafter “Plaintiff” or “ERC”) brings
28 this action as a private attorney general and in the public interest pursuant to Health and Safety
Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement Act of
1986 (Health & Safety Code section 25249.5, *et seq.*) also known as “Proposition 65,” mandates

1 that businesses with ten or more employees must provide a “clear and reasonable warning” prior
2 to exposing any individual to a chemical known to the state to cause cancer or reproductive
3 toxicity. Lead, cadmium, and mercury are chemicals known to the State of California to cause
4 cancer and/or birth defects and other reproductive harm. This Complaint seeks injunctive and
5 declaratory relief and civil penalties to remedy the ongoing failure of Defendants Black Rifle
6 Coffee Company LLC, BRC Inc., and BRCC Operating Company LLC (collectively “Black
7 Rifle Coffee Company”) and Does 1-100 (hereinafter individually referred to as “Defendant” or
8 collectively as “Defendants”), to warn consumers that they have been exposed to lead, and/or
9 cadmium, and/or mercury, from a number of Black Rifle Coffee Company’s nutritional health
10 products, as set forth in paragraph 3, at levels exceeding the applicable Maximum Allowable
11 Dose Level (“MADL”) and requiring a warning pursuant to Health & Safety Code section
12 25249.6.

13 II

14 PARTIES

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

19 3. Defendant Black Rifle Coffee Company is a business that develops, manufactures,
20 markets, distributes, and/or sells coffee and other products that have exposed users to lead
21 and/or cadmium and/or mercury in the State of California within the relevant statute of
22 limitations period. These “SUBJECT PRODUCTS” (as identified in the Notice dated July 6,
23 2022 attached hereto as *Exhibit A*) are: (1) CC17 Combat Cocoa (lead, cadmium), (2) Black
24 Rifle Coffee Company Espresso Mocha (lead, mercury), and (3) Black Rifle Coffee Company
25 Espresso With Cream (lead).

26 4. Defendant is organized into various business entities, including Black Rifle Coffee
27 Company LLC, a Delaware limited liability company; BRCC Operating Company LLC, a
28 Delaware limited liability company; and BRC Inc., a Delaware public benefit corporation

1 (collectively, “Black Rifle Coffee Company.”) The said companies are subject to Proposition 65
2 as they collectively employ ten or more persons and have employed ten or more persons at all
3 times relevant to this action.

4 5. Defendants Does 1-100, are named herein under fictitious names, as their true names
5 and capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that
6 each of said Does is responsible, in some actionable manner, for the events and happenings
7 hereinafter referred to, either through said Does’ conduct, or through the conduct of its agents,
8 servants or employees, or in some other manner, causing the harms alleged by ERC in this
9 Complaint. When said true names and capacities of Does are ascertained, ERC will seek leave
10 to amend this Complaint to set forth the same.

11 III

12 JURISDICTION AND VENUE

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

17 7. This Court has jurisdiction over Black Rifle Coffee Company because Black Rifle
18 Coffee Company has sufficient minimum contacts with California, and otherwise intentionally
19 avails itself of the California market through the marketing, distribution, and/or sale of the
20 SUBJECT PRODUCTS in the State of California, so as to render the exercise of jurisdiction
21 over it by the California courts consistent with traditional notions of fair play and substantial
22 justice.

23 8. The Complaint is based on allegations contained in the Notice of Violation, dated
24 July 6, 2022, and served thereafter on the California Attorney General, other public enforcers,
25 and Black Rifle Coffee Company. The Notice of Violation constitutes adequate notice to Black
26 Rifle Coffee Company because it provided adequate information to allow Black Rifle Coffee
27 Company to assess the nature of the alleged violations, consistent with Proposition 65 and its
28 implementing regulations. A certificate of merit and a certificate of service accompanied each

1 copy of the Notice of Violation, and both certificates comply with Proposition 65 and its
2 implementing regulations. The Notice of Violation served on Black Rifle Coffee Company also
3 included a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition
4 65): A Summary.” Service of the Notice of Violation and accompanying documents complied
5 with Proposition 65 and its implementing regulations. Attached hereto as *Exhibit A* is a true
6 and correct copy of the Notice of Violation and associated documents. More than 70 days have
7 passed since ERC mailed the Notice of Violation to Black Rifle Coffee Company. This notice
8 period satisfies Proposition 65’s requirement for a minimum of 60 days’ notice and complies
9 with Civ. Pro. Code §1013(a) by allowing an additional 10 calendar days for service by mail
10 outside of the State of California but within the United States. No public enforcement entity has
11 filed a Complaint in this case.

12 9. This Court is the proper venue for the action because the causes of action have arisen in
13 the County of Alameda where some of the violations of law have occurred, and will continue to
14 occur, due to the ongoing sale there of Black Rifle Coffee Company’s products. Furthermore,
15 venue is proper in this Court under Code of Civil Procedure section 395.5 and Health & Safety
16 Code section 25249.7.

17 IV

18 STATUTORY BACKGROUND

19 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
20 passed as “Proposition 65” by an overwhelming majority vote of the people in November of
21 1986.

22 11. The warning requirement of Proposition 65 is contained in Health & Safety Code
23 section 25249.6, which provides:

24 No person in the course of doing business shall knowingly and
25 intentionally expose any individual to a chemical known to the state to
26 cause cancer or reproductive toxicity without first giving clear and
27 reasonable warning to such individual, except as provided in Section
28 25249.10.

12. The Office of Environmental Health Hazard Assessment (“OEHHA”), a division of the

1 California Environmental Protection Agency (“CalEPA”), is the lead agency in charge of the
2 implementation of Proposition 65. OEHHA administers the Proposition 65 program and
3 administers regulations that govern Proposition 65 in general, including warnings to comply
4 with the statute. The warning regulations are found at Title 27 of the California Code of
5 Regulations, Article 6. The regulations define “exposure” as “to cause to ingest, inhale, contact
6 via body surfaces or otherwise come into contact with a listed chemical. An individual may
7 come into contact with a listed chemical through water, air, food, consumer products and any
8 other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27, §
9 25102, subd. (i).)

10 13. In this case, the exposures are caused by consumer products. A consumer product is
11 defined as “any article, or component part thereof, including food, that is produced, distributed,
12 or sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit.
13 27, § 25600.1, subd. (d).) Food “includes ‘dietary supplements’ as defined in California Code
14 of Regulations, title 17, section 10200.” (*Id.* at subd. (g).) A consumer product exposure is “an
15 exposure that results from a person’s acquisition, purchase, storage, consumption, or any
16 reasonably foreseeable use of a consumer product, including consumption of a food.” (*Id.* at
17 subd. (e).)

18 14. On August 30, 2016, the Office of Administrative Law approved the adoption of
19 OEHHA’s amendments to Article 6, Clear and Reasonable Warnings of the California Code of
20 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the
21 California Code of Regulations, Article 6 (sections 25601, *et seq.*) and replaced the repealed
22 sections with new regulations set forth in two new Subarticles to Article 6 that became
23 operative on August 30, 2018 (the “New Warning Regulations”). The New Warning
24 Regulations provide, among other things, methods of transmission and content of warnings
25 deemed to comply with Proposition 65. Black Rifle Coffee Company is subject to the warning
26 requirements set forth in the New Warning Regulations that became operative on August 30,
27 2018.

28 15. Health & Safety Code section 25249.6 provides that: “No person in the course of doing

1 business shall knowingly and intentionally expose any individual to a chemical known to the
2 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
3 to such individual” The New Warning Regulations apply when clear and reasonable
4 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,
5 consumer product warnings “must be prominently displayed on a label, labeling, or sign, and
6 must be displayed with such conspicuousness as compared with other words, statements,
7 designs or devices on the label, labeling, or sign, as to render the warning likely to be seen,
8 read, and understood by an ordinary individual under customary conditions of purchase or use.”
9 (*Id.* at § 25601, subd. (c).)

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

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

22 18. Cadmium was officially listed as a chemical known to cause developmental toxicity and
23 male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were
24 listed as chemicals known to the State of California to cause cancer on October 1, 1987. (State
25 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986
26 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL for
27 cadmium as a chemical known to cause reproductive toxicity is 4.1 micrograms per day. (Cal.
28 Code Regs., tit. 27, §25805, subd. (b).)

1 19. Mercury and mercury compounds were listed as chemicals known to the State of
2 California to cause developmental toxicity in the fetus and male and female reproductive
3 toxicity on July 1, 1990 (State of California EPA OEHHA Safe Drinking Water and Toxic
4 Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer and Reproductive
5 Toxicity).

6 20. Proposition 65 provides that any person “violating or threatening to violate” Proposition
7 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,
8 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
9 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
10 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
11 (Health & Safety Code, § 25249.7, subd. (b)(1).)

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

16 **V**

17 **STATEMENT OF FACTS**

18 22. Black Rifle Coffee Company has developed, manufactured, marketed, distributed,
19 and/or sold the SUBJECT PRODUCTS containing lead and/or cadmium and/or mercury into
20 the State of California. Consumption of the SUBJECT PRODUCTS according to the directions
21 and/or recommendations provided for said products causes consumers to be exposed to lead at
22 levels exceeding the 0.5 micrograms per day MADL and/or cadmium at levels exceeding the
23 4.1 micrograms of cadmium per day MADL and/or exposed to mercury and requiring a
24 warning. Consumers have been ingesting these products since at least 2014, when Black Rifle
25 Coffee Company was founded, without any knowledge of their exposure to these very
26 dangerous chemicals.

27 23. Lead, cadmium, and mercury do not occur naturally in coffee nor are they “inherent” to
28 the process of roasting coffee beans or brewing coffee.

1 24. For many years, Black Rifle Coffee Company has knowingly and intentionally exposed
2 numerous persons to lead and/or cadmium and/or mercury without providing any type of
3 Proposition 65 warning. Prior to ERC's Notice of Violation and this Complaint, Black Rifle
4 Coffee Company failed to provide a warning on the labels of the SUBJECT PRODUCTS or
5 provide any other legally acceptable warning. Black Rifle Coffee Company has, at all times
6 relevant hereto, been aware that the SUBJECT PRODUCTS contained lead and/or cadmium
7 and/or mercury and that persons using these products have been exposed to these chemicals.
8 Black Rifle Coffee Company has been aware of the presence of lead and/or cadmium and/or
9 mercury in the SUBJECT PRODUCTS and has failed to disclose the presence of these
10 chemicals to the public, who undoubtedly believe they have been ingesting healthy and pure
11 products pursuant to the company's statements.

12 25. Both prior and subsequent to ERC's Notice of Violation, Black Rifle Coffee Company
13 failed to provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning
14 that they have been exposed to chemicals known to the State of California to cause cancer
15 and/or birth defects and other reproductive harm. This failure to warn is ongoing.

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

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

21 27. By committing the acts alleged above, Black Rifle Coffee Company has, in the course of
22 doing business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to
23 lead and/or cadmium and/or mercury, chemicals known to the State of California to cause
24 cancer and/or birth defects and other reproductive harm, without first giving clear and
25 reasonable warning to such individuals within the meaning of Health & Safety Code section
26 25249.6. In doing so, Black Rifle Coffee Company has violated Health & Safety Code section
27 25249.6 and continues to violate the statute with each successive sale of the SUBJECT
28 PRODUCTS.

1 28. Said violations render Black Rifle Coffee Company liable for civil penalties, up to
2 \$2,500 per day for each violation, and subject Black Rifle Coffee Company to injunction.

3 **SECOND CAUSE OF ACTION**
4 **(Declaratory Relief)**

5 29. ERC refers to paragraphs 1-26, inclusive, and incorporates them herein by this
6 reference.

7 30. There exists an actual controversy relating to the legal rights and duties of the Parties,
8 within the meaning of Code of Civil Procedure section 1060, between ERC and Black Rifle
9 Coffee Company, concerning whether Black Rifle Coffee Company has exposed individuals to
10 chemicals known to the State of California to cause cancer and/or birth defects and other
11 reproductive harm without providing clear and reasonable warning.

12 **VI**

13 **PRAYER**

14 WHEREFORE ERC prays for relief as follows:

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

17 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
18 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive
19 orders, or other orders as are necessary to prevent Black Rifle Coffee Company from exposing
20 persons to lead and/or cadmium and/or mercury without providing clear and reasonable
21 warning;

22 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
23 Procedure section 1060 declaring that Black Rifle Coffee Company has exposed individuals to
24 lead and/or cadmium and/or mercury without providing clear and reasonable warning; and

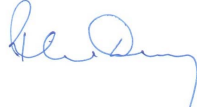
25 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
26 Procedure section 1021.5 or the substantial benefit theory;

27 5. For costs of suit herein; and

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

1 DATED: January 11, 2023

LOZEAU | DRURY LLP

2 

3 _____
4 Richard Drury
5 Adam J. Frankel
6 Attorneys for Plaintiff Environmental Research Center,
7 Inc.
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EXHIBIT A



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Current CEO or President
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and BRCC Operating Company LLC
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Coffee Company LLC and BRCC Operating
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Wilmington, DE 19801

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VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select 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:

Black Rifle Coffee Company LLC

BRC Inc.

BRCC Operating Company LLC

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

- **CC17 Combat Cocoa – Lead, Cadmium**
- **Black Rifle Coffee Company Espresso Mocha - Lead, Mercury**
- **Black Rifle Coffee Company Espresso With Cream - 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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.

July 6, 2022

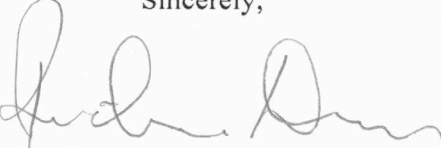
Page 5

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 chemicals, lead and/or cadmium and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium and/or mercury. 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 ingesting these products that they are being exposed to lead and/or cadmium and/or mercury. Each of these ongoing violations has occurred on every day since July 6, 2019, 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 chemicals; (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 product 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 chemicals 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 Black Rifle Coffee Company LLC, BRC Inc., BRCC Operating Company LLC and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

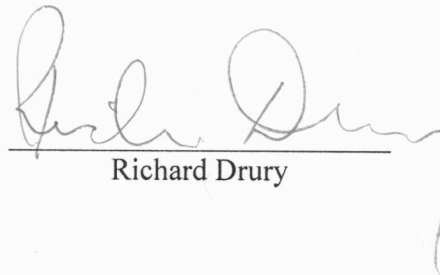
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Black Rifle Coffee Company LLC, BRC Inc., and BRCC Operating Company LLC

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 chemicals that are 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: July 6, 2022


Richard Drury

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Black Rifle Coffee Company LLC; BRC Inc.;
and BRCC Operating Company LLC
355 Spencer Lane, Suite 101
San Antonio, TX 78201

CT Corporation System
(Registered Agent for Black Rifle
Coffee Company LLC)
1108 East South Union Ave
Midvale, UT 84047

Current CEO or President
Black Rifle Coffee Company LLC; BRC Inc.;
and BRCC Operating Company LLC
1144 S 500 W
Salt Lake City, UT 84101

CT Corporation System
(Registered Agent for Black Rifle
Coffee Company LLC and BRCC
Operating Company LLC)
1999 Bryan St, Suite 900
Dallas, TX 75201

Current CEO or President
Black Rifle Coffee Company LLC; BRC Inc.;
and BRCC Operating Company LLC
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Sparks, NV 89434

CT Corporation System
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Operating Company LLC)
1200 South Pine Island Rd
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Coffee Company LLC)
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The Corporation Trust Company
(Registered Agent for Black Rifle
Coffee Company LLC and BRCC Operating
Company LLC)
Corporation Trust Center
1209 N. Orange Street
Wilmington, DE 19801

July 6, 2022

Page 8

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** 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:

Nancy O'Malley, District Attorney
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Oakland, CA 94621
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

July 6, 2022

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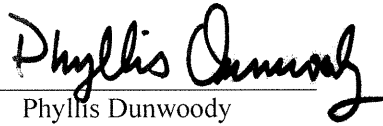
Notice of Violations of California Health & Safety Code §25249.5 et seq.

July 6, 2022

Page 10

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on July 6, 2022, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

July 6, 2022

Page 11

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Marysville, CA 95901

Los Angeles City
Attorney's Office
City Hall East
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Los Angeles, CA 90012

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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