

1 Matthew C. Maclear (SBN 209228)  
2 Anthony M. Barnes (SBN 199048)  
3 Aqua Terra Aeris Law Group  
4 4030 Martin Luther King Jr. Way  
5 Oakland, CA 94609  
6 Telephone: (415) 568-5200  
7 Email: mcm@atalawgroup.com  
8 amb@atalawgroup.com

9 Attorneys for Plaintiff Environmental Research Center, Inc.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Alameda  
**04/18/2023 at 11:30:59 AM**  
By: Darnekia Oliver,  
Deputy Clerk

10  
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 **RISEANDSHINE CORPORATION,**  
18 **individually and dba RISE BREWING CO.;**  
19 **and DOES 1-100**

20 **Defendants.**

**CASE NO. 23CV031518**

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

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

21 Plaintiff Environmental Research Center, Inc. hereby alleges:

22 **I**

23 **INTRODUCTION**

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

1 reproductive toxicity. Lead and mercury are chemicals known to the State of California to  
2 cause cancer and/or birth defects and other reproductive harm. This Complaint seeks injunctive  
3 and declaratory relief and civil penalties to remedy the ongoing failure of Defendants  
4 RiseandShine Corporation, individually and dba Rise Brewing Co. (“Rise Brewing Co.”) and  
5 Does 1-100 (hereinafter individually referred to as “Defendant” or collectively as  
6 “Defendants”), to warn consumers that they have been exposed to lead and/or mercury from a  
7 number of Rise Brewing Co.’s nutritional health products as set forth in paragraph 3 at levels  
8 exceeding the applicable Maximum Allowable Dose Level (“MADL”) and requiring a warning  
9 pursuant to Health & Safety Code section 25249.6.

## 10 II

### 11 PARTIES

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

16 3. Defendant Rise Brewing Co. is a business that develops, manufactures, markets,  
17 distributes, and/or sells nutritional health products that have exposed users to lead and/or  
18 mercury in the State of California within the relevant statute of limitations period. These  
19 “SUBJECT PRODUCTS” (as identified in the Notices of Violation dated January 5, 2023 and  
20 January 20, 2023 attached hereto as **Exhibits A and B**) are: (1) Rise Brewing Co. Oat Milk  
21 Mocha Nitro Cold Brew Coffee Dairy Free (lead), (2) Rise Brewing Co. Oat Milk Latte Organic  
22 Cold Brew Coffee Dairy Free Caffeine Level 2 (lead), (3) Rise Brewing Co. Oat Milk Vanilla  
23 Organic Cold Brew Coffee Dairy Free Caffeine Level 2 (lead, mercury), and (4) Rise Brewing  
24 Co. Organic Oat Milk Original Dairy Free (lead, mercury). RiseandShine Corporation,  
25 individually and dba Rise Brewing Co. is a company subject to Proposition 65 as it employs ten  
26 or more persons and has employed ten or more persons at all times relevant to this action.

27 4. Defendants Does 1-100, are named herein under fictitious names, as their true names  
28 and capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that

1 each of said Does is responsible, in some actionable manner, for the events and happenings  
2 hereinafter referred to, either through said Does' conduct, or through the conduct of its agents,  
3 servants or employees, or in some other manner, causing the harms alleged by ERC in this  
4 Complaint. When said true names and capacities of Does are ascertained, ERC will seek leave  
5 to amend this Complaint to set forth the same.

### 6 III

#### 7 JURISDICTION AND VENUE

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

12 6. This Court has jurisdiction over Rise Brewing Co. because Rise Brewing Co. has  
13 sufficient minimum contacts with California, and otherwise intentionally avails itself of the  
14 California market through the marketing, distribution, and/or sale of the SUBJECT  
15 PRODUCTS in the State of California so as to render the exercise of jurisdiction over it by the  
16 California courts consistent with traditional notions of fair play and substantial justice.

17 7. The Complaint is based on allegations contained in the Notices of Violation dated  
18 January 5, 2023 and January 20, 2023, served on the California Attorney General, other public  
19 enforcers, and Rise Brewing Co. The Notices of Violation constitute adequate notice to Rise  
20 Brewing Co. because they provided adequate information to allow Rise Brewing Co. to assess  
21 the nature of the alleged violations, consistent with Proposition 65 and its implementing  
22 regulations. A certificate of merit and a certificate of service accompanied each copy of the  
23 Notices of Violation, and both certificates comply with Proposition 65 and its implementing  
24 regulations. The Notices of Violation served on Rise Brewing Co. also included a copy of "The  
25 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."  
26 Service of the Notices of Violation and accompanying documents complied with Proposition 65  
27 and its implementing regulations. Attached hereto as **Exhibits A** and **B** are true and correct  
28 copies of the Notices of Violation and associated documents. More than 60 days have passed

1 since ERC mailed the Notices of Violation and no public enforcement entity has filed a  
2 Complaint in this case.

3 8. This Court is the proper venue for the action because the causes of action have arisen in  
4 the County of Alameda where some of the violations of law have occurred, and will continue to  
5 occur, due to the ongoing sale of Rise Brewing Co.'s products. Furthermore, venue is proper in  
6 this Court under Code of Civil Procedure section 395.5 and Health & Safety Code section  
7 25249.7.

#### 8 IV

#### 9 STATUTORY BACKGROUND

10 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
11 passed as "Proposition 65" by an overwhelming majority vote of the people in November of  
12 1986.

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

15 No person in the course of doing business shall knowingly and  
16 intentionally expose any individual to a chemical known to the state to  
17 cause cancer or reproductive toxicity without first giving clear and  
18 reasonable warning to such individual, except as provided in Section  
19 25249.10.

20 11. The Office of Environmental Health Hazard Assessment ("OEHHA"), a division of Cal  
21 EPA, is the lead agency in charge of the implementation of Proposition 65. OEHHA  
22 administers the Proposition 65 program and administers regulations that govern Proposition 65  
23 in general, including warnings to comply with the statute. The warning regulations are found at  
24 Title 27 of the California Code of Regulations, Article 6. The regulations define expose as "to  
25 cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed  
26 chemical. An individual may come into contact with a listed chemical through water, air, food,  
27 consumer products and any other environmental exposure as well as occupational exposures."  
28 (Cal. Code Regs., tit. 27, § 25102, subd. (i).)

12. In this case, the exposures are caused by consumer products. A consumer product is

1 defined as “any article, or component part thereof, including food, that is produced, distributed,  
2 or sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit.  
3 27, § 25600.1, subd. (d).) Food “includes ‘dietary supplements’ as defined in California Code  
4 of Regulations, title 17, section 10200.” (*Id.* at subd. (g).) A consumer product exposure is “an  
5 exposure that results from a person’s acquisition, purchase, storage, consumption, or any  
6 reasonably foreseeable use of a consumer product, including consumption of a food.” (*Id.* at  
7 subd. (e).)

8 13. On August 30, 2016, the Office of Administrative Law approved the adoption of  
9 OEHHA’s amendments to Article 6, Clear and Reasonable Warnings of the California Code of  
10 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the  
11 California Code of Regulations, Article 6 (sections 25601 *et seq.*) and replaced the repealed  
12 sections with new regulations set forth in two new Subarticles to Article 6 that became  
13 operative on August 30, 2018 (the “New Warning Regulations”). The New Warning  
14 Regulations provide, among other things, methods of transmission and content of warnings  
15 deemed to comply with Proposition 65. Rise Brewing Co. is subject to the warning  
16 requirements set forth in the New Warning Regulations that became operative on August 30,  
17 2018.

18 14. Health & Safety Code section 25249.6 provides that “No person in the course of doing  
19 business shall knowingly and intentionally expose any individual to a chemical known to the  
20 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning  
21 to such individual . . . .” The New Warning Regulations apply when clear and reasonable  
22 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,  
23 consumer product warnings “must be prominently displayed on a label, labeling, or sign, and  
24 must be displayed with such conspicuousness as compared with other words, statements,  
25 designs or devices on the label, labeling, or sign, as to render the warning likely to be seen,  
26 read, and understood by an ordinary individual under customary conditions of purchase or use.”  
27 (*Id.* at § 25601, subd. (c).)

28 15. Proposition 65 establishes a procedure by which the State is to develop a list of

1 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,  
2 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after  
3 the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

4 16. Lead was listed as a chemical known to the State of California to cause developmental  
5 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was  
6 listed as a chemical known to the State of California to cause cancer on October 1, 1992.

7 (OEHHA Chemicals Considered or Listed Under Proposition 65 -  
8 <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.) The MADL for lead  
9 as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal. Code  
10 Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is 15  
11 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

12 17. Mercury and mercury compounds were listed as chemicals known to the State of  
13 California to cause developmental toxicity in the fetus and male and female reproductive  
14 toxicity on July 1, 1990 (OEHHA Chemicals Considered or Listed Under Proposition 65 -  
15 <https://oehha.ca.gov/proposition-65/chemicals/mercury-and-mercury-compounds>).

16 18. Proposition 65 provides that any person “violating or threatening to violate” Proposition  
17 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,  
18 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial  
19 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)  
20 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.  
21 (Health & Safety Code, § 25249.7, subd. (b)(1).)

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

26 **V**

27 **STATEMENT OF FACTS**

28 20. Rise Brewing Co. has developed, manufactured, marketed, distributed, and/or sold the

1 SUBJECT PRODUCTS containing lead and/or mercury into the State of California.  
2 Consumption of the SUBJECT PRODUCTS according to the directions and/or  
3 recommendations provided for said products causes consumers to be exposed to lead at levels  
4 exceeding the 0.5 micrograms per day MADL and/or be exposed to mercury and requiring a  
5 warning. Consumers have been ingesting these products for many years, without any  
6 knowledge of their exposure to these very dangerous chemicals.

7 21. For many years, Rise Brewing Co. has knowingly and intentionally exposed numerous  
8 persons to lead and/or mercury without providing any type of Proposition 65 warning. Prior to  
9 ERC's Notices of Violation and this Complaint, Rise Brewing Co. failed to provide a warning  
10 on the labels of the SUBJECT PRODUCTS or provide any other legally acceptable warning.  
11 Rise Brewing Co. has, at all times relevant hereto, been aware that the SUBJECT PRODUCTS  
12 contained lead and/or mercury and that persons using these products have been exposed to these  
13 chemicals. Rise Brewing Co. has been aware of the presence of lead and/or mercury in the  
14 SUBJECT PRODUCTS and has failed to disclose the presence of these chemicals to the public,  
15 who undoubtedly believe they have been ingesting totally healthy and pure products pursuant to  
16 the company's statements.

17 22. Both prior and subsequent to ERC's Notices of Violation, Rise Brewing Co. failed to  
18 provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning that they  
19 have been exposed to chemicals known to the State of California to cause cancer and/or birth  
20 defects and other reproductive harm. This failure to warn is ongoing.

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

24 23. ERC refers to paragraphs 1-22, inclusive, and incorporates them herein by this  
25 reference.

26 24. By committing the acts alleged above, Rise Brewing Co. has, in the course of doing  
27 business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to lead  
28 and/or mercury, chemicals known to the State of California to cause cancer and/or birth defects

1 and other reproductive harm, without first giving clear and reasonable warning to such  
2 individuals within the meaning of Health & Safety Code section 25249.6. In doing so, Rise  
3 Brewing Co. has violated Health & Safety Code section 25249.6 and continues to violate the  
4 statute with each successive sale of the SUBJECT PRODUCTS.

5 25. Said violations render Rise Brewing Co. liable for civil penalties, up to \$2,500 per day  
6 for each violation, and subject Rise Brewing Co. to injunction.

7 **SECOND CAUSE OF ACTION**  
8 **(Declaratory Relief)**

9 26. ERC refers to paragraphs 1-25, inclusive, and incorporates them herein by this  
10 reference.

11 27. There exists an actual controversy relating to the legal rights and duties of the Parties,  
12 within the meaning of Code of Civil Procedure section 1060, between ERC and Rise Brewing  
13 Co., concerning whether Rise Brewing Co. has exposed individuals to chemicals known to the  
14 State of California to cause cancer and/or birth defects and other reproductive harm without  
15 providing clear and reasonable warning.

16 **VI**

17 **PRAYER**

18 WHEREFORE ERC prays for relief as follows:

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

21 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,  
22 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive  
23 orders, or other orders as are necessary to prevent Rise Brewing Co. from exposing persons to  
24 lead and/or mercury without providing clear and reasonable warning;

25 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
26 Procedure section 1060 declaring that Rise Brewing Co. has exposed individuals to lead and/or  
27 mercury without providing clear and reasonable warning; and

28 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil



1 Procedure section 1021.5 or the substantial benefit theory;

2 5. For costs of suit herein; and

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

4 ///

5 DATED: April 18, 2023

AQUA TERRA AERIS LAW GROUP

6

7



8

Matthew C. Maclear

9

Anthony M. Barnes

10

Attorney for Environmental Research Center, Inc.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

# EXHIBIT A



Matthew Maclear  
[mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
415-568-5200

Anthony Barnes  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)  
917-371-8293

January 5, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**RiseandShine Corporation, individually and dba Rise Brewing Co.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 5, 2023  
Page 2

- 1. Rise Brewing Co. Oat Milk Mocha Nitro Cold Brew Coffee Dairy Free - Lead**
- 2. Rise Brewing Co. Oat Milk Latte Organic Cold Brew Coffee Dairy Free Caffeine Level 2 – Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 5, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 5, 2023  
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

---

Matthew Maclear  
**AQUA TERRA AERIS LAW GROUP**

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to RiseandShine Corporation, individually and dba Rise Brewing Co., and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 5, 2023  
Page 4

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by RiseandShine Corporation, individually and dba Rise Brewing Co.**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party 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 Violator 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.

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large initial "M".

Dated: January 5, 2023

\_\_\_\_\_  
Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 5, 2023  
Page 5

**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 January 5, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
RiseandShine Corporation, individually and  
dba Rise Brewing Co.  
7 Steep Hollow Lane  
Cos Cob, CT 06807

BlumbergExcelsior Corporate Services, Inc.  
(Registered Agent for RiseandShine Corporation,  
individually and dba Rise Brewing Co.)  
1013 Centre Rd, Ste 403S  
Wilmington, DE 19805

Current President or CEO  
RiseandShine Corporation, individually and  
dba Rise Brewing Co.  
425 Fairfield Ave, Building 4  
Stamford, CT 06902

The Corporation  
(Registered Agent for RiseandShine Corporation,  
individually and dba Rise Brewing Co.)  
243 West 14<sup>th</sup> St, Apt 1F  
New York, NY 10011

Grant Gyesky  
(Registered Agent for RiseandShine Corporation,  
individually and dba Rise Brewing Co.)  
7 Steep Hollow Lane  
Cos Cob, CT 06807

On January 5, 2023, 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 5, 2023  
Page 6

On January 5, 2023, 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  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Ste C  
Napa, CA 94559  
CEPD@countyofnapa.org

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co nevada.ca.us

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

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

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com





Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 5, 2023  
Page 7

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org  
Starla.Sousa@sfcityatty.org

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

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

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

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

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

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

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



On January 5, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 5, 2023, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

Phyllis Dunwoody



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

January 5, 2023

Page 9

**Service List**

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, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Colusa County 310 6 <sup>th</sup> St Colusa, CA 95932	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr , 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St , Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991	
District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	

## 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.<sup>1</sup> 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

---

<sup>1</sup> 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](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 contaminant<sup>2</sup> 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.

---

<sup>2</sup> 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](mailto: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.



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

# EXHIBIT B



Matthew Maclear  
[mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
415-568-5200

Anthony Barnes  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)  
917-371-8293

January 20, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**RiseandShine Corporation, individually and dba Rise Brewing Co.**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 2

- 1. Rise Brewing Co. Oat Milk Vanilla Organic Cold Brew Coffee Dairy Free Caffeine Level 2 – Lead, Mercury**
- 2. Rise Brewing Co. Organic Oat Milk Original Dairy Free – Lead, Mercury**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 20, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

---

Matthew Maclear  
**AQUA TERRA AERIS LAW GROUP**

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to RiseandShine Corporation, individually and dba Rise Brewing Co., and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 4

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by RiseandShine Corporation, individually and dba Rise Brewing Co.**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party 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 Violator 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.

A handwritten signature in black ink that reads "Matthew Maclear".

Dated: January 20, 2023

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 5

**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 January 20, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
RiseandShine Corporation, individually and  
dba Rise Brewing Co.  
7 Steep Hollow Lane  
Cos Cob, CT 06807

BlumbergExcelsior Corporate Services, Inc.  
(Registered Agent for RiseandShine Corporation,  
individually and dba Rise Brewing Co.)  
1013 Centre Rd, Ste 403S  
Wilmington, DE 19805

Current President or CEO  
RiseandShine Corporation, individually and  
dba Rise Brewing Co.  
425 Fairfield Ave, Building 4  
Stamford, CT 06902

The Corporation  
(Registered Agent for RiseandShine Corporation,  
individually and dba Rise Brewing Co.)  
243 West 14<sup>th</sup> St, Apt 1F  
New York, NY 10011

Grant Gyesky  
(Registered Agent for RiseandShine Corporation,  
individually and dba Rise Brewing Co.)  
7 Steep Hollow Lane  
Cos Cob, CT 06807

On January 20, 2023, 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 6

On January 20, 2023, 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  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Ste C  
Napa, CA 94559  
CEPD@countyofnapa.org

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co nevada.ca.us

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

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

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 7

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org  
Starla.Sousa@sfcityatty.org

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

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

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

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

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

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

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





Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 8

On January 20, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 20, 2023, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody", is written over a horizontal line.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2023  
Page 9

### Service List

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, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Colusa County 310 6 <sup>th</sup> St Colusa, CA 95932	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr , 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St , Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991	
District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637		

## 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.<sup>1</sup> 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

---

<sup>1</sup> 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](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 contaminant<sup>2</sup> 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.

---

<sup>2</sup> 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](mailto: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.