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**FILED**  
 ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

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

**CASE NO. 23CV025570**

**STIPULATED CONSENT  
 JUDGMENT**

**Plaintiff,**

Health & Safety Code § 25249.5 *et seq.*

**vs.**

Action Filed: January 11, 2023

Trial Date: None set

**BLACK RIFLE COFFEE COMPANY  
 LLC; BRC INC.; BRCC OPERATING  
 COMPANY LLC; and DOES 1-100**

**Defendants.**

**1. INTRODUCTION**

1.1 On January 11, 2023, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
2 (“Proposition 65”), against Black Rifle Coffee Company LLC, BRC Inc., and BRCC Operating  
3 Company LLC (collectively “Black Rifle Coffee Company”) and Does 1-100. In this action,  
4 ERC alleges that a number of products manufactured, distributed, or sold by Black Rifle  
5 Coffee Company contain lead and/or cadmium and/or mercury, chemicals listed under  
6 Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these  
7 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
8 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) CC17  
9 Combat Cocoa (lead, cadmium), (2) Black Rifle Coffee Company Espresso Mocha (lead,  
10 mercury), and (3) Black Rifle Coffee Company Espresso With Cream (lead).

11 **1.2** ERC and Black Rifle Coffee Company are hereinafter referred to individually  
12 as a “Party” or collectively as the “Parties.”

13 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
16 and encouraging corporate responsibility.

17 **1.4** For purposes of this Consent Judgment, the Parties agree that Black Rifle Coffee  
18 Company is a business entity that has employed ten or more persons at all times relevant to this  
19 action and qualifies as a “person in the course of doing business” within the meaning of  
20 Proposition 65. Black Rifle Coffee Company manufactures, distributes, and/or sells the Covered  
21 Products.

22 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
23 dated July 6, 2022 that was served on the California Attorney General, other public enforcers,  
24 and Black Rifle Coffee Company (“Notice”). A true and correct copy of the 60-Day Notice  
25 dated July 6, 2022, is attached hereto as *Exhibit A* and incorporated herein by reference. More  
26 than 60 days have passed since the Notice was served on the Attorney General, public  
27 enforcers, and Black Rifle Coffee Company and no designated governmental entity has filed a  
28 complaint against Black Rifle Coffee Company with regard to the Covered Products or the

1 alleged violations.

2           **1.6**   ERC's Notice and Complaint allege that use of the Covered Products by  
3 California consumers exposes them to lead and/or cadmium and/or mercury without first  
4 receiving clear and reasonable warnings from Black Rifle Coffee Company, which is in  
5 violation of California Health and Safety Code section 25249.6. Black Rifle Coffee Company  
6 denies all material allegations contained in the Notice and Complaint.

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

14           **1.8**   Except as expressly set forth herein, nothing in this Consent Judgment shall  
15 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
16 any current or future legal proceeding unrelated to these proceedings.

17           **1.9**   The Effective Date of this Consent Judgment is the date on which it is entered  
18 as a Judgment by this Court.

19           **2.    JURISDICTION AND VENUE**

20           For purposes of this Consent Judgment and any further court action that may become  
21 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
22 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
23 over Black Rifle Coffee Company as to the acts alleged in the Complaint, that venue is proper in  
24 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
25 final resolution of all claims up through and including the Effective Date that were or could have  
26 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

28           **3.1**   Beginning on the Effective Date, Black Rifle Coffee Company shall be

1 permanently enjoined from manufacturing for sale in the State of California, “Distributing into  
2 the State of California,” or directly selling in the State of California, any Covered Product that  
3 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day  
4 and/or “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day  
5 and/or “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless  
6 it meets the warning requirements under Section 3.2. The requirements of Sections 3.1 and 3.2  
7 do not apply to Covered Products that “enter the stream of commerce” prior to the Effective  
8 Date. For purposes of this Consent Judgment, the term “enter the stream of commerce” means  
9 that manufactured Covered Products have been put into final packaging for consumer sale and  
10 are no longer in the possession of or under the control of Black Rifle Coffee Company.

11           **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
12 of California” shall mean to directly ship a Covered Product into California for sale in  
13 California or to sell a Covered Product to a distributor that Black Rifle Coffee Company knows  
14 or has reason to know will sell the Covered Product in California.

15           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
16 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
17 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
18 product (using the largest serving size appearing on the product label), multiplied by servings  
19 of the product per day (using the largest number of recommended daily servings appearing on  
20 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section  
21 3.1.5, the amount of lead in the ingredients listed in **Table 1** below, if applicable. If the label  
22 contains no recommended daily servings, then the number of recommended daily servings  
23 shall be one.

24           **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure  
25 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
26 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
27 the product (using the largest serving size appearing on the product label), multiplied by  
28 servings of the product per day (using the largest number of recommended daily servings

1 appearing on the label), which equals micrograms of cadmium exposure per day. If the label  
2 contains no recommended daily servings, then the number of recommended daily servings  
3 shall be one.

4           **3.1.4** For purposes of this Consent Judgment, the “Daily Mercury Exposure  
5 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
6 micrograms of mercury per gram of product, multiplied by grams of product per serving of the  
7 product (using the largest serving size appearing on the product label), multiplied by servings  
8 of the product per day (using the largest number of recommended daily servings appearing on  
9 the label), which equals micrograms of mercury exposure per day. If the label contains no  
10 recommended daily servings, then the number of recommended daily servings shall be one.

11           **3.1.5** In calculating the Daily Lead Exposure Level for a Covered Product,  
12 Black Rifle Coffee Company shall be allowed to deduct the amount of lead which is deemed  
13 “naturally occurring” in the ingredients listed in **Table 1** that are contained in that Covered  
14 Product under the following conditions: For each year that Black Rifle Coffee Company claims  
15 entitlement to a “naturally occurring” allowance for lead, Black Rifle Coffee Company shall  
16 provide ERC with the following information: (a) Black Rifle Coffee Company must produce to  
17 ERC a written list of each ingredient in the Covered Product, and the amount, measured in  
18 grams, of each such ingredient contained therein, for which a “naturally occurring” allowance is  
19 claimed; (b) Black Rifle Coffee Company must provide ERC with documentation of laboratory  
20 testing, conducted during the year for which the “naturally occurring” allowance is claimed, that  
21 complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in  
22 each ingredient listed in **Table 1** that is contained in the Covered Product and for which Black  
23 Rifle Coffee Company intends to deduct “naturally occurring” lead; (c) If the laboratory testing  
24 reveals the presence of lead in any of the ingredients listed in **Table 1** that are contained in the  
25 Covered Product, Black Rifle Coffee Company shall be entitled to deduct the amount of lead  
26 contained in each such ingredient, up to the full amount of the allowance for each such  
27 ingredient as shown in **Table 1**, but not to exceed the total amount of lead contained in such  
28 ingredient; and (d) If the Covered Product does not contain any of the ingredients listed in **Table**

1, Black Rifle Coffee Company shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for those ingredients. The information required by Sections 3.1.5(a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary thereof, for any year that Black Rifle Coffee Company shall claim entitlement to the “naturally occurring” allowance:

**TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 1.0 microgram/gram


### 3.2 Clear and Reasonable Warnings

If Black Rifle Coffee Company is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized (“Warning”):

#### **OPTION 1:**

**WARNING:** Consuming this product can expose you to chemicals including [lead] [and] [cadmium] [and] [mercury] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

#### **OPTION 2:**

 **WARNING:** [Cancer and] Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Black Rifle Coffee Company shall use the phrase “cancer and” in the Warning if Black Rifle Coffee Company has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Black Rifle Coffee Company has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word “WARNING.” Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. For the Option 1 Warning, as

1 identified in the brackets, the Warning shall reflect at least one chemical present in each of the  
2 Covered Products.

3 The Warning shall be securely affixed to or printed upon the label of each Covered  
4 Product, and it must be set off from other surrounding information. For Option 1, the Warning  
5 shall be enclosed in a box. In addition, for any Covered Product sold over the internet, the  
6 Warning shall appear either on the checkout page when a California delivery address is  
7 indicated for any purchase of any Covered Product or on the Covered Product's primary  
8 display page. If the Warning is displayed on the checkout page when a California delivery  
9 address is indicated, an asterisk or other identifying method must be utilized to identify which  
10 products on the checkout page are subject to the Warning. Whether the Warning is displayed  
11 on the checkout page when a California deliver address is indicated or the Covered Product's  
12 primary display page, the Warning may be displayed by a hyperlink, using the word  
13 "WARNING" in all capital and bold letters so long as the hyperlink goes directly to a page  
14 prominently displaying the Warning without content that detracts from the Warning. A  
15 warning is not prominently displayed if the purchaser must search for it in the general content  
16 of the website.

17 The Warning shall be at least the same size as the largest of any other health or safety  
18 warnings also appearing on the website or on the label and the word "WARNING" shall be in all  
19 capital letters and in bold print. No statements intended to or likely to have the effect of  
20 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
21 Further no statements may accompany the Warning that state or imply that the source of the listed  
22 chemical has an impact on or results in a less harmful effect of the listed chemical.

23 Black Rifle Coffee Company must display the above Warning with such conspicuousness,  
24 as compared with other words, statements or designs on the label, or on its website, if applicable,  
25 to render the Warning likely to be read and understood by an ordinary individual under customary  
26 conditions of purchase or use of the product.

27 For purposes of this Consent Judgment, the term "label" means a display of written,  
28 printed or graphic material that is printed on or affixed to a Covered Product or its immediate

1 container or wrapper.

### 2 **3.3 Conforming Covered Products**

3 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
4 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Cadmium Exposure  
5 Level” is no greater than 4.1 micrograms of cadmium per day and/or the “Daily Mercury  
6 Exposure Level” is no greater than 0.3 micrograms of mercury per day as determined by the  
7 exposure methodology set forth in Section 3.1.2 and the quality control methodology described in  
8 Section 3.4, and that is not known by Black Rifle Coffee Company to contain other chemicals that  
9 violate Proposition 65’s safe harbor thresholds.

### 10 **3.4 Testing and Quality Control Methodology**

11 **3.4.1** Beginning within one year of the Effective Date, Black Rifle Coffee  
12 Company shall arrange for lead, cadmium, and mercury testing of the Covered Products at  
13 least once a year for a minimum of three (3) consecutive years by arranging for testing of three  
14 (3) randomly selected samples of each of the Covered Products, in the form intended for sale to  
15 the end-user, which Black Rifle Coffee Company intends to sell or is manufacturing for sale in  
16 California, directly selling to a consumer in California or “Distributing into the State of  
17 California.” If tests conducted pursuant to this Section demonstrate that no Warning is required  
18 for a Covered Product during each of three (3) consecutive years, then the testing requirements  
19 of this Section will no longer be required as to that Covered Product. However, if during or  
20 after the three-year testing period, Black Rifle Coffee Company changes ingredient suppliers  
21 for any of the Covered Products and/or reformulates any of the Covered Products, Black Rifle  
22 Coffee Company shall test that Covered Product annually for at least three (3) consecutive  
23 years after such change is made.

24 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the  
25 “Daily Cadmium Exposure Level” and/or the “Daily Mercury Exposure Level,” the highest  
26 lead and/or cadmium and/or mercury detection result of the three (3) randomly selected  
27 samples of the Covered Products will be controlling.

28 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a



1 laboratory method that complies with the performance and quality control factors appropriate  
2 for the method used, including limit of detection and limit of quantification, sensitivity,  
3 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
4 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010  
5 mg/kg.

6 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
7 independent third party laboratory certified by the California Environmental Laboratory  
8 Accreditation Program or an independent third-party laboratory that is registered with the  
9 United States Food & Drug Administration.

10 **3.4.5** Nothing in this Consent Judgment shall limit Black Rifle Coffee  
11 Company’s ability to conduct, or require that others conduct, additional testing of the Covered  
12 Products, including the raw materials used in their manufacture.

13 **3.4.6** Within thirty (30) days of ERC’s written request, Black Rifle Coffee  
14 Company shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Black Rifle Coffee  
15 Company shall retain all test results and documentation for a period of five years from the date  
16 of each test.

#### 17 **4. SETTLEMENT PAYMENT**

18 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
19 payments, attorney’s fees, and costs, Black Rifle Coffee Company shall make a total payment  
20 of \$150,000.00 (“Total Settlement Amount”) to ERC within ten (10) days of the Effective Date  
21 (“Due Date”) subject to ERC providing Black Rifle Coffee Company with a current W-9.  
22 Black Rifle Coffee Company shall make this payment by wire transfer to ERC’s account, for  
23 which ERC will give Black Rifle Coffee Company the necessary account information. The  
24 Total Settlement Amount shall be apportioned as follows:

25 **4.2** \$60,000.00 shall be considered a civil penalty pursuant to California Health and  
26 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$45,000.00) of the civil penalty to  
27 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
28 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety

1 Code section 25249.12(c). ERC will retain the remaining 25% (\$15,000.00) of the civil  
2 penalty.

3 **4.3** \$1,295.02 shall be distributed to ERC as reimbursement to ERC for reasonable  
4 costs incurred in bringing this action.

5 **4.4** \$42,891.15 shall be distributed to ERC as an Additional Settlement Payment  
6 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
7 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
8 allegedly caused by Defendants in this matter. These activities are detailed below and support  
9 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in  
10 products in California. ERC’s activities have had, and will continue to have, a direct and  
11 primary effect within the State of California because California consumers will be benefitted  
12 by the reduction and/or elimination of exposure to lead and/or cadmium and/or mercury in  
13 dietary supplements and/or by providing clear and reasonable warnings to California  
14 consumers prior to ingestion of the products.

15 Based on a review of past years’ actual budgets, ERC is providing the following list of  
16 activities ERC engages in to protect California consumers through Proposition 65 citizen  
17 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
18 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing  
19 dietary supplement products that may contain lead and/or cadmium and/or mercury and are  
20 sold to California consumers. This work includes continued monitoring and enforcement of  
21 past consent judgments and settlements to ensure companies are in compliance with their  
22 obligations thereunder, with a specific focus on those judgments and settlements concerning  
23 lead and/or cadmium and/or mercury. This work also includes investigation of new companies  
24 that ERC does not obtain any recovery through settlement or judgment; (2) VOLUNTARY  
25 COMPLIANCE PROGRAM (up to 10-20%): maintaining ERC’s Voluntary Compliance  
26 Program by acquiring products from companies, developing and maintaining a case file, testing  
27 products from these companies, providing the test results and supporting documentation to the  
28 companies, and offering guidance in warning or implementing a self-testing program for lead

1 and/or cadmium and/or mercury in dietary supplement products; and (3) "GOT LEAD"  
2 PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers  
3 of contaminated products that reach California consumers by providing access to free testing  
4 for lead in dietary supplement products. (Products submitted to the program are screened for  
5 ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
6 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
7 that submitted the product).

8 ERC shall be fully accountable in that it will maintain adequate records to document  
9 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds  
10 are being spent only for the proper, designated purposes described in this Consent Judgment.  
11 ERC shall provide the Attorney General, within thirty days of any request, copies of  
12 documentation demonstrating how such funds have been spent.

13 **4.5** \$20,323.50 shall be distributed to Lozeau Drury LLP as reimbursement of  
14 ERC's attorney fees, while \$25,490.33 shall be distributed to ERC for its in-house legal fees.  
15 Except as explicitly provided herein, each Party shall bear its own fees and costs.

16 **4.6** In the event that Black Rifle Coffee Company fails to remit the Total Settlement  
17 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, Black  
18 Rifle Coffee Company shall be deemed to be in material breach of its obligations under this  
19 Consent Judgment. ERC shall provide written notice of the delinquency to Black Rifle Coffee  
20 Company via electronic mail. If Black Rifle Coffee Company fails to deliver the Total  
21 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount  
22 shall accrue interest at the statutory judgment interest rate provided in the California Code of  
23 Civil Procedure section 685.010. Additionally, Black Rifle Coffee Company agrees to pay  
24 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under  
25 this Consent Judgment.

## 26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
28 written stipulation of the Parties and upon entry by the Court of a modified consent judgment

1 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
2 modified consent judgment.

3       **5.2** If Black Rifle Coffee Company seeks to modify this Consent Judgment under  
4 Section 5.1, then Black Rifle Coffee Company must provide written notice to ERC of its intent  
5 (“Notice of Intent”). If ERC seeks to meet and confer regarding the proposed modification in  
6 the Notice of Intent, then ERC must provide written notice to Black Rifle Coffee Company  
7 within thirty (30) days of receiving the Notice of Intent. If ERC notifies Black Rifle Coffee  
8 Company in a timely manner of ERC’s intent to meet and confer, then the Parties shall meet  
9 and confer in good faith as required in this Section. The Parties shall meet in person or via  
10 telephone within thirty (30) days of ERC’s notification of its intent to meet and confer. Within  
11 thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall  
12 provide to Black Rifle Coffee Company a written basis for its position. The Parties shall  
13 continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
14 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
15 deadlines for the meet-and-confer period.

16       **5.3** In the event that Black Rifle Coffee Company initiates or otherwise requests a  
17 modification under Section 5.1, and the meet and confer process leads to a joint motion or  
18 application for a modification of the Consent Judgment, Black Rifle Coffee Company shall  
19 reimburse ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-  
20 confer process and filing and arguing the motion or application.

21       **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
22       **JUDGMENT**

23       **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
24 terminate this Consent Judgment.

25       **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
26 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
27 inform Black Rifle Coffee Company in a reasonably prompt manner of its test results, including  
28 information sufficient to permit Black Rifle Coffee Company to identify the Covered Products

1 at issue. Black Rifle Coffee Company shall, within thirty (30) days following such notice,  
2 provide ERC with testing information, from an independent third-party laboratory meeting the  
3 requirements of Sections 3.4.3 and 3.4.4, demonstrating Black Rifle Coffee Company's  
4 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter  
5 prior to ERC taking any further legal action.

## 6 **7. APPLICATION OF CONSENT JUDGMENT**

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

## 13 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

14 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
15 on behalf of itself and in the public interest, and Black Rifle Coffee Company and its  
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
17 divisions, suppliers, franchisees, licensees, customers (not including private label customers of  
18 Black Rifle Coffee Company), distributors, wholesalers, retailers, and all other upstream and  
19 downstream entities in the distribution chain of any Covered Product, and the predecessors,  
20 successors, and assigns of any of them (collectively, "Released Parties").

21 **8.2** ERC, acting in the public interest, releases the Released Parties from any  
22 and all claims for violations of Proposition 65 up through the Effective Date based on exposure  
23 to lead and/or cadmium and/or mercury from the Covered Products as set forth in the Notice of  
24 Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released  
25 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
26 penalties, fees, costs, and expenses asserted, or that could have been asserted from the  
27 handling, use, or consumption of the Covered Products, as to any alleged violation of  
28 Proposition 65 or its implementing regulations arising from the failure to provide Proposition

1 65 warnings on the Covered Products regarding lead and/or cadmium and/or mercury up to and  
2 including the Effective Date.

3 **8.3** ERC on its own behalf only, and Black Rifle Coffee Company on its own  
4 behalf only, further waive and release any and all claims they may have against each other for  
5 all actions or statements made or undertaken in the course of seeking or opposing enforcement  
6 of Proposition 65 in connection with the Notice and Complaint up through and including the  
7 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
8 right to seek to enforce the terms of this Consent Judgment.

9 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
10 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
11 discovered. ERC on behalf of itself only, and Black Rifle Coffee Company on behalf of itself  
12 only, acknowledge that this Consent Judgment is expressly intended to cover and include all  
13 such claims up through and including the Effective Date, including all rights of action,  
14 therefore. ERC and Black Rifle Coffee Company acknowledge that the claims released in  
15 Sections 8.2 and 8.3 above may include unknown claims, and nevertheless waive California  
16 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542  
17 reads as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
21 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
PARTY.

22 ERC on behalf of itself only, and Black Rifle Coffee Company on behalf of itself only,  
23 acknowledge and understand the significance and consequences of this specific waiver of  
24 California Civil Code section 1542.

25 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
26 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
27 exposures to lead and/or cadmium and/or mercury in the Covered Products as set forth in the  
28 Notice and Complaint.

1           **8.6**    Nothing in this Consent Judgment is intended to apply to any occupational or  
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Black Rifle  
3 Coffee Company’s products other than the Covered Products.

4           **9.    SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

8           **10.   GOVERNING LAW**

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

11           **11.   PROVISION OF NOTICE**

12            All notices required to be given to either Party to this Consent Judgment by the other shall  
13 be in writing and sent to the following agents listed below via first-class mail or via electronic  
14 mail where required. Courtesy copies via email may also be sent.

15 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**  
16 Chris Heptinstall, Executive Director, Environmental Research Center  
17 3111 Camino Del Rio North, Suite 400  
18 San Diego, CA 92108  
19 Ph: (619) 500-3090  
20 Email: chris.heptinstall@erc501c3.org

21 With a copy to:  
22 RICHARD T. DRURY  
23 ADAM J. FRANKEL  
24 LOZEAU | DRURY LLP  
25 1939 Harrison Street, Suite 150  
26 Oakland, CA 94612  
27 Ph: 510-836-4200  
28 Email: richard@lozeaudrury.com  
             adam@lozeaudrury.com

29 **FOR BLACK RIFLE COFFEE COMPANY LLC;**  
30 **BRC INC.; BRCC OPERATING COMPANY LLC:**  
31 Black Rifle Coffee Company  
32 1144 South 500 West  
33 Salt Lake City, UT 84101  
34 **legal@blackriflecoffee.com**

1 With a copy to:  
2 BRENT E. JOHNSON  
3 HOLLAND & HART LLP  
4 222 South Main Street, Suite 2200  
5 Salt Lake City, UT 84101  
6 Ph: 801-799-5807  
7 Email: bjohnson@hollandhart.com

8 **12. COURT APPROVAL**

9 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
10 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
11 Consent Judgment.

12 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
13 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
14 prior to the hearing on the motion.

15 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
16 void and have no force or effect.

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

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

///



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

2             If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
3 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or  
4 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may  
5 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

6     **16. ENFORCEMENT**

7             ERC may, by motion or order to show cause before the Superior Court of Alameda  
8 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
9 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
10 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

11     **17. ENTIRE AGREEMENT, AUTHORIZATION**

12             **17.1** This Consent Judgment contains the sole and entire agreement and  
13 understanding of the Parties with respect to the entire subject matter herein, including any and  
14 all prior discussions, negotiations, commitments, and understandings related thereto. No  
15 representations, oral or otherwise, express or implied, other than those contained herein have  
16 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
17 herein, shall be deemed to exist or to bind any Party.

18             **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

20     **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
21 **CONSENT JUDGMENT**

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

25             (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
26 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
27 been diligently prosecuted, and that the public interest is served by such settlement; and

28             (2) Make the findings pursuant to California Health and Safety Code section

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after  
3 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

4 **IT IS SO STIPULATED:**

5  
6 Dated: 2/28/, 2023

ENVIRONMENTAL RESEARCH  
CENTER, INC.

7  
8 By:   
9 Chris Heptinstall, Executive Director

10  
11 Dated: 2/28/2023, 2023

BLACK RIFLE COFFEE COMPANY LLC

12 DocuSigned by:  
13 Gregory J. Iverson  
14 64D174A1E1C3453... on  
15 By:  
16 Its: CFO

17 Dated: 2/28/2023, 2023

BRC INC.

18 DocuSigned by:  
19 Gregory J. Iverson  
20 64D174A1E1C3453... in  
21 By: Gregory J. Iverson  
22 Its: CFO

23 Dated: 2/28/2023, 2023

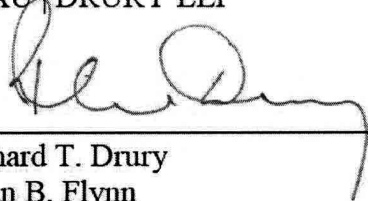
BRCC OPERATING COMPANY LLC

24 DocuSigned by:  
25 Gregory J. Iverson  
26 64D174A1E1C3453... in  
27 By:  
28 Its: CFO

1 **APPROVED AS TO FORM:**


2  
3 Dated: February 28, 2023

LOZEAU DRURY LLP

4  
5 By:   
6 Richard T. Drury  
7 Brian B. Flynn  
8 Attorneys for Plaintiff Environmental  
9 Research Center, Inc.

9 Dated: February 28 , 2023

HOLLAND & HART LLP

10  
11 By:   
12 Brent E. Johnson  
13 Attorney for Defendants Black Rifle  
14 Coffee Company LLC, BRC Inc., and  
15 BRCC Operating Company LLC

16  
17 **ORDER AND JUDGMENT**

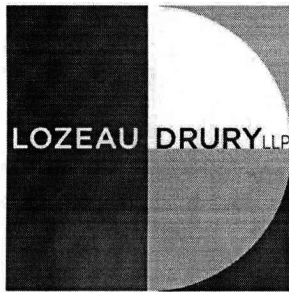
18 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
19 approved and Judgment is hereby entered according to its terms.

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21  
22 Dated: 6/8/ , 2023

  
23 Judge of the Superior Court

# **EXHIBIT A**



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA 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

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

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

CT Corporation System  
(Registered Agent for Black Rifle  
Coffee Company LLC)  
330 N Brand Blvd, Suite 700  
Glendale, CA 91203

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

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

**VIA CERTIFIED MAIL**

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

CT Corporation System  
(Registered Agent for BRCC  
Operating Company LLC)  
1200 South Pine Island Rd  
Plantation, FL 33324

**VIA ELECTRONIC MAIL**

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CEPDProp65@acgov.org

Barbara Yook, District Attorney  
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Prop65Env@co.calaveras.ca.us

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consumerprotection@fresnocountyca.gov

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San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

**VIA ELECTRONIC MAIL**

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222 E. Weber Avenue, Room 202  
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San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

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1112 Santa Barbara Street  
Santa Barbara, CA 93101  
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221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

**VIA ELECTRONIC MAIL**

Gregory D. Totten, District Attorney  
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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

**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

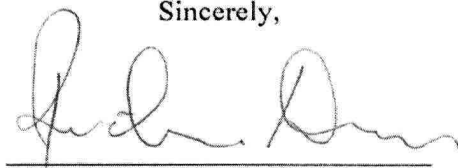
Page 5

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)

July 6, 2022

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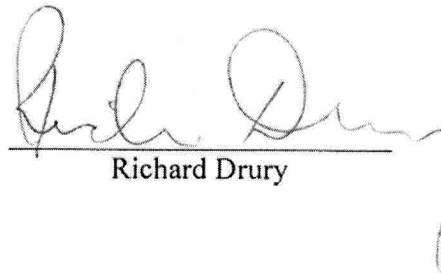
**CERTIFICATE OF MERIT**

**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  
755 Lillard Dr  
Sparks, NV 89434

CT Corporation System  
(Registered Agent for BRCC  
Operating Company LLC)  
1200 South Pine Island Rd  
Plantation, FL 33324

CT Corporation System  
(Registered Agent for Black Rifle  
Coffee Company LLC)  
330 N Brand Blvd, Suite 700  
Glendale, CA 91203

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

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  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
[CEPDProp65@acgov.org](mailto:CEPDProp65@acgov.org)

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
[mcdam@mariposacounty.org](mailto:mcdam@mariposacounty.org)

Barbara Yook, District Attorney  
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891 Mountain Ranch Road  
San Andreas, CA 95249  
[Prop65Env@co.calaveras.ca.us](mailto:Prop65Env@co.calaveras.ca.us)

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Stacey Grassini, Deputy District Attorney  
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Allison Haley, District Attorney  
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Thomas L. Hardy, District Attorney  
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Clifford H. Newell, District Attorney  
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Nevada City, CA 95959  
[DA.Prop65@co nevada.ca.us](mailto:DA.Prop65@co nevada.ca.us)

Michelle Latimer, Program Coordinator  
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Todd Spitzer, District Attorney  
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[Prop65notice@da.ocgov.com](mailto:Prop65notice@da.ocgov.com)

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

July 6, 2022

Page 9

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Summer Stephan, District Attorney  
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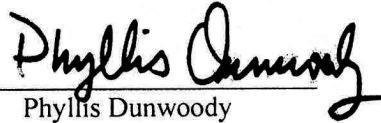
Notice of Violations of California Health & Safety Code §25249.5 et seq.

July 6, 2022

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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.

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

Phyllis Dunwoody

July 6, 2022

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Hall of Justice  
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Madera County  
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## 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

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<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.

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<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.

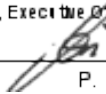
A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

*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.

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 06/09/2023
PLAINTIFF/PETITIONER: ENVIRONMENTAL RESEARCH CENTER, INC.	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: BLACK RIFLE COFFEE COMPANY LLC et al	
<b>CERTIFICATE OF MAILING</b>	CASE NUMBER: 23CV025570

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Salt Lake City, UT 84101

Richard Toshiyuki Drury  
Lozeau Drury LLP  
1939 Harrison St, Ste 150  
Oakland, CA 94612

Chad Finke, Executive Officer / Clerk of the Court

Dated: 06/09/2023

By:



P. Bir, Deputy Clerk

**CERTIFICATE OF MAILING**