

Chad Finke, Executive Officer / Clerk of the Court  
By:           V. Hutton           Deputy

1 WILLIAM F. WRAITH, SBN 185927  
2 WRAITH LAW  
3 25361 Commercentre Drive, Ste 150  
4 Lake Forest, CA 92630  
5 Tel: (949) 452-1234  
6 Email: bill@wraithlaw.com

7 Attorney for Plaintiff  
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

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

14 **Plaintiff,**

15 **vs.**

16 **THE BU LLC and DOES 1-100**

17 **Defendants.**

18 **Case No. 23CV027154**

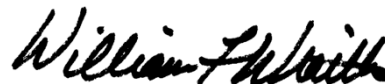
19 **NOTICE OF ENTRY OF JUDGMENT**

20  
21 **TO ALL PARTIES AND TO THEIR ATTORNEY'S OF RECORD:**

22 **PLEASE TAKE NOTICE** that the Court entered Judgment in the above-entitled matter.

23 A true and correct copy of the Judgment is attached hereto as Exhibit A.

24 Dated: October 2, 2023      WRAITH LAW

25 

26 By: \_\_\_\_\_

27 William F. Wraith  
28 Attorney for Plaintiff  
Environmental Research Center, Inc.

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

# EXHIBIT A

# EXHIBIT A

Electronically Received 07/12/2023 07:44 AM

1 WILLIAM F. WRAITH, SBN 185927  
2 WRAITH LAW  
3 25361 Commercentre Drive, Ste 150  
4 Lake Forest, CA 92630  
5 Tel: (949) 452-1234  
6 Email: bill@wraithlaw.com

7 Attorney for Plaintiff Environmental Research Center, Inc.

8 SCOTT HALL, SBN 232492  
9 COBLENTZ PATCH DUFFY & BASS LLP  
10 One Montgomery Street, Suite 3000  
11 San Francisco, CA 94104  
12 Tel: (415) 772-5798  
13 Email: shall@coblentzlaw.com

14 Attorney for Defendant The Bu LLC

**FILED**  
**ALAMEDA COUNTY**

SEP 16 2023

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

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

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

**Plaintiff,**

**vs.**

**THE BU LLC and DOES 1-100**

**Defendants.**

**CASE NO. 23CV027154**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 2, 2023

Trial Date: None set

**1. INTRODUCTION**

**1.1** On February 2, 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") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against The Bu LLC (“The Bu”) and Does 1-100. In this action, ERC  
2 alleges that a number of products manufactured, distributed, or sold by The Bu contain lead  
3 and/or mercury, chemicals listed under Proposition 65 as carcinogens and/or reproductive  
4 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.  
5 These products (referred to hereinafter individually as a “Covered Product” or collectively as  
6 “Covered Products”) are: (1) The Bu Lavender Raw Kombucha (lead, mercury), (2) The Bu  
7 Strawberry Hibiscus Raw Kombucha (lead, mercury), (3) The Bu Ginger Peach Raw  
8 Kombucha (lead, mercury), (4) The Bu Tropical Raw Kombucha (lead, mercury), and (5) The  
9 Bu Honeydew Raw Kombucha (lead, mercury).

10           1.2     ERC and The Bu are hereinafter referred to individually as a “Party” or  
11 collectively as the “Parties.”

12           1.3     ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
13 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
14 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
15 and encouraging corporate responsibility.

16           1.4     For purposes of this Consent Judgment only, the Parties agree that The Bu is a  
17 business entity that has employed ten or more persons at all times relevant to this action and  
18 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. The  
19 Bu manufactures, distributes, and/or sells the Covered Products.

20           1.5     The Complaint is based on allegations contained in ERC’s Notice of Violation  
21 dated August 4, 2022 that was served on the California Attorney General, other public  
22 enforcers, and The Bu (“Notice”). A true and correct copy of the 60-Day Notice dated August  
23 4, 2022 is attached hereto as **Exhibit A** and incorporated herein by reference. More than 60  
24 days have passed since the Notice was served on the Attorney General, public enforcers, and  
25 The Bu and no designated governmental entity has filed a Complaint against The Bu with  
26 regard to the Covered Products or the alleged violations.

27           1.6     ERC’s Notice and Complaint allege that use of the Covered Products by  
28 California consumers exposes them to lead and/or mercury without first receiving clear and

1 reasonable warnings from The Bu, which is in violation of California Health and Safety Code  
2 section 25249.6. The Bu denies all material allegations contained in the Notice and Complaint  
3 and asserts that the Covered Products are safe and in compliance with all applicable laws, rules  
4 and regulations, including Proposition 65.

5       **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
6 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
7 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
8 or be construed as an admission by any of the Parties or by any of their respective officers,  
9 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
10 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
11 issue of law, or violation of law.

12       **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
14 any current or future legal proceeding unrelated to these proceedings.

15       **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
16 as a Judgment by this Court.

17       **2.     JURISDICTION AND VENUE**

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

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

26       **3.1**     Beginning on the Effective Date, The Bu shall not manufacture for sale in the  
27 State of California, "Distribute into the State of California" or directly sell in the State of  
28 California, any Covered Product that exposes a person to a "Daily Lead Exposure Level" of

1 more than 0.5 micrograms of lead per day and/or “Daily Mercury Exposure Level” of more  
2 than 0.3 micrograms of mercury per day unless it meets the warning requirements under  
3 Section 3.2.

4           **3.1.1** As used in this Consent Judgment, the term “Distribute (Distributing)  
5 into the State of California” shall mean to directly ship a Covered Product into California for  
6 sale in California or to sell a Covered Product to a distributor that The Bu knows or has reason  
7 to know will sell the Covered Product in California. For purposes of clarity, all Covered  
8 Products that have been or will have been distributed, shipped, sold, or otherwise “Placed into  
9 the Stream of Commerce” by The Bu prior to the Effective Date are exempt from the  
10 provisions of Section 3.1 and are included in the release in Section 8. For purposes of this  
11 Consent Judgment, the term “Placed into the Stream of Commerce” means that manufactured  
12 Covered Products have been put into final packaging for consumer sale and are no longer in  
13 the possession of or under the control of The Bu. If requested in writing by ERC, The Bu shall  
14 be required to provide documentation to ERC, within 30 days of ERC’s written request, to  
15 establish that a Covered Product at issue was distributed, shipped, sold, or otherwise Placed  
16 into the Stream of Commerce by The Bu prior to the Effective Date.

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

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

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

3 **3.2 Clear and Reasonable Warnings**

4 If The Bu is required to provide a warning pursuant to Section 3.1, the following warning  
5 must be utilized (“Warning”):

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

9 The Bu shall use the phrase “cancer and” in the Warning if The Bu has reason to believe  
10 that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined  
11 pursuant to the quality control methodology set forth in Section 3.4 or if The Bu has reason to  
12 believe that another Proposition 65 chemical is present which may require a cancer warning. As  
13 identified in the brackets, the warning shall appropriately reflect whether there is lead, mercury, or  
14 multiple chemicals present in each of the Covered Products, but if there is a chemical present at a  
15 level that requires a cancer warning, the chemical requiring use of the phrase “cancer and” in the  
16 Warning shall always be identified.

17 The Warning shall be securely affixed to or printed upon the label of each Covered  
18 Product and it must be set off from other surrounding information and enclosed in a box. In  
19 addition, for any Covered Product sold over the internet, the Warning shall appear on the  
20 checkout page when a California delivery address is indicated for any purchase of any Covered  
21 Product. An asterisk or other identifying method must be utilized to identify which products on  
22 the checkout page are subject to the Warning. In no event shall any internet or website  
23 Warning be contained in or made through a link.

24 The Warning shall be at least the same size as the largest of any other health or safety  
25 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
26 capital letters and in bold print. No statements intended to or likely to have the effect of  
27 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
28 Further no statements may accompany the Warning that state or imply that the source of the listed

1 chemical has an impact on or results in a less harmful effect of the listed chemical.

2 The Bu must display the above Warning with such conspicuousness, as compared with  
3 other words, statements or designs on the label, or on its website, if applicable, to render the  
4 Warning likely to be read and understood by an ordinary individual under customary conditions  
5 of purchase or use of the product.

6 For purposes of this Consent Judgment, the term "label" means a display of written,  
7 printed or graphic material that is printed on or affixed to a Covered Product or its immediate  
8 container or wrapper.

9 **3.3 Conforming Covered Products**

10 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure  
11 Level" is no greater than 0.5 micrograms of lead per day and/or the "Daily Mercury Exposure  
12 Level" is no greater than 0.3 micrograms of mercury per day as determined by the exposure  
13 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
14 3.4, and that is not known by The Bu to contain other chemicals that violate Proposition 65's safe  
15 harbor thresholds.

16 **3.4 Testing and Quality Control Methodology**

17 **3.4.1** Beginning within one year of the Effective Date, The Bu shall arrange for  
18 lead and mercury testing of the Covered Products at least once a year for a minimum of five  
19 consecutive years by arranging for testing of three (3) randomly selected samples of each of the  
20 Covered Products, in the form intended for sale to the end-user, which The Bu intends to sell or is  
21 manufacturing for sale in California, directly selling to a consumer in California or "Distributing  
22 into the State of California." If tests conducted pursuant to this Section demonstrate that no  
23 Warning is required for a Covered Product during each of five consecutive years, then the testing  
24 requirements of this Section will no longer be required as to that Covered Product. However, if  
25 during or after the five-year testing period, The Bu changes ingredient suppliers for any of the  
26 Covered Products and/or reformulates any of the Covered Products, The Bu shall test that Covered  
27 Product annually for at least four (4) consecutive years after such change is made.

28 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or the



1 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three  
2 (3) randomly selected samples of the Covered Products will be controlling.

3 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
4 laboratory method that complies with the performance and quality control factors appropriate  
5 for the method used, including limit of detection and limit of quantification, sensitivity,  
6 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
7 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
8 mg/kg.

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

13 **3.4.5** Nothing in this Consent Judgment shall limit The Bu’s ability to  
14 conduct, or require that others conduct, additional testing of the Covered Products, including  
15 the raw materials used in their manufacture.

16 **3.4.6** Within thirty (30) days of ERC’s written request, The Bu shall deliver  
17 lab reports obtained pursuant to Section 3.4 to ERC. The Bu shall retain all test results and  
18 documentation for a period of five years from the date of each test.

19 **3.4.7** Notwithstanding anything else in this Consent Judgment, all individual  
20 Covered Products that have been or will have been distributed, shipped, sold, or otherwise  
21 Placed in the Stream of Commerce by The Bu prior to the Effective Date shall be exempt from  
22 the testing obligations of this Section 3.4 and shall be subject to the release of liability pursuant  
23 to Section 8 of this Consent Judgment, without regard to when such Covered Products were, or  
24 are in the future, distributed or sold to consumers. If requested in writing by ERC, The Bu  
25 shall be required to provide documentation to ERC, within 30 days of ERC’s written request,  
26 to establish that a Covered Product at issue was distributed, shipped, sold, or otherwise Placed  
27 into the Stream of Commerce by The Bu prior to the Effective Date.

28 **3.4.8** The testing requirements under this Section 3.4 do not apply to any

1 Covered Product for which The Bu has provided the Warning specified in Section 3.2  
2 continuously and uninterrupted after the Effective Date or that The Bu is no longer selling to  
3 consumers in California as of the Effective Date, or "Distributing into the State of California"  
4 as of the Effective Date; however, in the event The Bu ceases to provide the Warning specified  
5 in Section 3.2 or resumes selling the Covered Product to consumers in California or  
6 "Distributing into the State of California" the Covered Product, The Bu shall be required to  
7 comply with the testing requirements of this Section beginning immediately after (a) the date  
8 the Warning ceases to be provided or (b) the date that The Bu resumes selling the Covered  
9 Product to consumers in California or "Distributing into the State of California" the Covered  
10 Product (whichever is applicable) or one year after the Effective Date, whichever date is later.

11 **4. SETTLEMENT PAYMENT**

12 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
13 payments, attorney's fees, and costs, The Bu shall make a total payment of \$10,000.00 ("Total  
14 Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). The Bu shall  
15 make this payment by wire transfer to ERC's account, for which ERC will give The Bu the  
16 necessary account information. The Total Settlement Amount shall be apportioned as follows:

17 **4.2** \$500.00 shall be considered a civil penalty pursuant to California Health and  
18 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$375.00) of the civil penalty to the  
19 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
20 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
21 Code section 25249.12(c). ERC will retain the remaining 25% (\$125.00) of the civil penalty.

22 **4.3** \$1,803.59 shall be distributed to ERC as reimbursement to ERC for reasonable  
23 costs incurred in bringing this action.

24 **4.4.** \$4,000.00 shall be distributed to Wraith Law as reimbursement of ERC's  
25 attorney fees, while \$3,696.41 shall be distributed to ERC for its in-house legal fees. Except as  
26 explicitly provided herein, each Party shall bear its own fees and costs.

27 **4.5** In the event that The Bu fails to remit the Total Settlement Amount owed under  
28 Section 4 of this Consent Judgment on or before the Due Date, The Bu shall be deemed to be

1 in material breach of its obligations under this Consent Judgment. ERC shall provide written  
2 notice of the delinquency to The Bu via electronic mail. If The Bu fails to deliver the Total  
3 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount  
4 shall accrue interest at the statutory judgment interest rate provided in the California Code of  
5 Civil Procedure section 685.010. Additionally, The Bu agrees to pay ERC's reasonable  
6 attorney's fees and costs for any efforts to collect the payment due under this Consent  
7 Judgment.

8 **5. MODIFICATION OF CONSENT JUDGMENT**

9 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written  
10 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by  
11 motion of either Party pursuant to Section 5.3 and upon entry by the Court of a modified  
12 consent judgment.

13 **5.2** If The Bu seeks to modify this Consent Judgment under Section 5.1, then The  
14 Bu must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet  
15 and confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
16 written notice to The Bu within thirty (30) days of receiving the Notice of Intent. If ERC  
17 notifies The Bu in a timely manner of ERC's intent to meet and confer, then the Parties shall  
18 meet and confer in good faith as required in this Section. The Parties shall meet in person or  
19 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.  
20 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall  
21 provide to The Bu a written basis for its position. The Parties shall continue to meet and confer  
22 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it  
23 become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
24 confer period.

25 **5.3** In the event that The Bu initiates or otherwise requests a modification under  
26 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
27 modification of the Consent Judgment, The Bu shall reimburse ERC its costs and reasonable  
28 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the

1 motion or application.

2 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
3 **JUDGMENT**

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
5 terminate this Consent Judgment.

6 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
7 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
8 inform The Bu in a reasonably prompt manner of its test results, including information  
9 sufficient to permit The Bu to identify the Covered Products at issue. The Bu shall, within  
10 thirty (30) days following such notice, provide ERC with testing information, from an  
11 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
12 demonstrating The Bu's compliance with the Consent Judgment. The Parties shall first attempt  
13 to resolve the matter prior to ERC taking any further legal action. As to individual Covered  
14 Products that have been or will have been distributed, shipped, sold, or otherwise Placed into  
15 the Stream of Commerce by the Bu prior to the Effective Date , The Bu shall, not be required  
16 to provide any testing information demonstrating compliance with this Consent Judgment. If  
17 requested in writing by ERC, The Bu shall be required to provide documentation to ERC,  
18 within 30 days of ERC's written request, to establish that a Covered Product at issue was  
19 distributed, shipped, sold, or otherwise Placed into the Stream of Commerce by The Bu prior to  
20 the Effective Date.

21 **7. APPLICATION OF CONSENT JUDGMENT**

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

28 ///

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

2               **8.1**           This Consent Judgment is a full, final, and binding resolution between  
3 ERC, on behalf of itself and in the public interest, and The Bu and its respective officers,  
4 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
5 franchisees, licensees, customers (not including private label customers of The Bu),  
6 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
7 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
8 of them (collectively, "Released Parties").

9               **8.2**           ERC, acting in the public interest, releases the Released Parties from any and  
10 all claims for violations of Proposition 65 up through the Effective Date based on exposure to  
11 lead and/or mercury from the Covered Products as set forth in the Notice of Violation. ERC, on  
12 behalf of itself only, hereby fully releases and discharges the Released Parties from any and all  
13 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
14 expenses asserted, or that could have been asserted from the handling, use, or consumption of the  
15 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations,  
16 or as to any other statutory or common law claim, arising from the failure to provide clear and  
17 reasonable warnings, including under Proposition 65, on the Covered Products regarding lead  
18 and/or mercury up to and including the Effective Date.

19              **8.3**           ERC on its own behalf only, and The Bu on its own behalf only, further  
20 waive and release any and all claims they may have against each other for all actions or  
21 statements made or undertaken in the course of seeking or opposing enforcement of  
22 Proposition 65 in connection with the Notice and Complaint up through and including the  
23 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
24 right to seek to enforce the terms of this Consent Judgment.

25              **8.4**           It is possible that other claims not known to the Parties, arising out of the facts  
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
27 discovered. ERC on behalf of itself only, and The Bu on behalf of itself only, acknowledge that  
28 this Consent Judgment is expressly intended to cover and include all such claims up through

1 and including the Effective Date, including all rights of action therefore. ERC and The Bu  
2 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown  
3 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
4 claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, and The Bu on behalf of itself only, acknowledge and understand  
12 the significance and consequences of this specific waiver of California Civil Code section  
13 1542.

14 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
15 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
16 exposures to lead and/or mercury in the Covered Products as set forth in the Notice and  
17 Complaint.

18 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
19 environmental exposures arising under Proposition 65, nor shall it apply to any of The Bu's  
20 products other than the Covered Products.

## 21 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

## 25 **10. GOVERNING LAW**

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

## 28 **11. PROVISION OF NOTICE**

All notices required to be given to either Party to this Consent Judgment by the other shall  
be in writing and sent to the following agents listed below via first-class mail or via electronic

1 mail where required. Courtesy copies via email may also be sent.

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

3 Chris Heptinstall, Executive Director, Environmental Research Center  
4 3111 Camino Del Rio North, Suite 400  
5 San Diego, CA 92108  
6 Ph: (619) 500-3090  
7 Email: chris.heptinstall@erc501c3.org

8 With a copy to:

9 WILLIAM F. WRAITH  
10 WRAITH LAW  
11 25361 Commercentre Drive, Ste 150  
12 Lake Forest, CA 92630  
13 Tel: (949) 452-1234  
14 Email: bill@wraithlaw.com

15 **THE BU LLC:**

16 c/o STUART LEE FRIEDEL  
17 DAVIS + GILBERT LLP  
18 1675 Broadway  
19 New York, NY 10019  
20 Tel: (212) 468-4818  
21 Email: sfriedel@dglaw.com

22 **12. COURT APPROVAL**

23 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
24 Motion for Court Approval of the Consent Judgment. The Parties shall use their best efforts to  
25 support entry of this Consent Judgment.

26 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
27 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
28 prior to the hearing on the motion.

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

**13. EXECUTION AND COUNTERPARTS**

This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
2 as the original signature.

3 **14. DRAFTING**

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

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

13 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
14 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or  
15 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may  
16 be filed in the absence of such a good faith attempt to resolve the dispute beforehand, as set forth  
17 in Section 16.

18 **16. ENFORCEMENT**

19 ERC may, by motion or order to show cause before the Superior Court of Alameda  
20 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
21 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
22 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
23 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
24 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent  
25 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are  
26 provided by law for failure to comply with Proposition 65 or other laws. Before filing a  
27 motion or order to show cause under this section, ERC shall provide The Bu with at least thirty  
28 (30) days written notice of any alleged violations of the terms and conditions contained in this



1 Consent Judgment, and the parties shall meet and confer in good faith in an effort to resolve  
2 any such alleged violations. As long as The Bu cures any such alleged violations within the  
3 thirty (30) day period (or if any such violations cannot practicably be cured within 30 days, it  
4 expeditiously initiates a cure with 30 days and completes it as soon as practicable) and The Bu  
5 provides proof satisfactory to ERC that the alleged violation(s) was the result of good faith  
6 mistake or accident, then The Bu shall not be in violation of the Consent Judgment.

7 **17. ENTIRE AGREEMENT, AUTHORIZATION**

8 **17.1** This Consent Judgment contains the sole and entire agreement and  
9 understanding of the Parties with respect to the entire subject matter herein, including any and  
10 all prior discussions, negotiations, commitments, and understandings related thereto. No  
11 representations, oral or otherwise, express or implied, other than those contained herein have  
12 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
13 herein, shall be deemed to exist or to bind any Party.

14 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
15 authorized by the Party he or she represents to stipulate to this Consent Judgment.

16 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
17 **CONSENT JUDGMENT**

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

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

24 (2) Make the findings pursuant to California Health and Safety Code section  
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

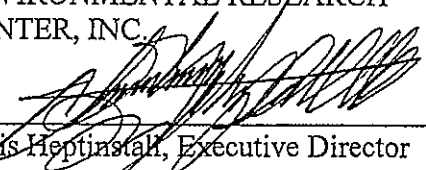
28 ///

1 **IT IS SO STIPULATED:**

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

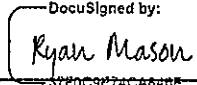
Dated: 6/21, 2023

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heptinstall, Executive Director

Dated: May 31, 2023

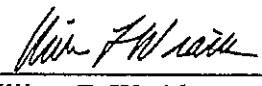
THE BU LLC

DocuSigned by:  
  
By: Ryan Mason  
Its: CEO

**APPROVED AS TO FORM:**

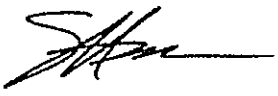
Dated: June 1, 2023

WRAITH LAW

By:   
William F. Wraith  
Attorney for Plaintiff Environmental  
Research Center, Inc.

Dated: May 30, 2023

COBLENTZ PATCH DUFFY & BASS  
LLP

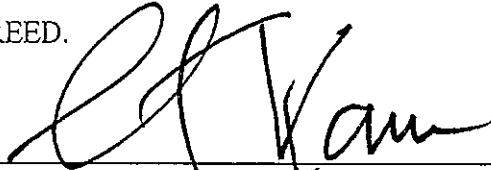
By:   
Scott Hall  
Attorney for Defendant The Bu LLC

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 9/16, 2023

  
\_\_\_\_\_  
Judge of the Superior Court

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**

**WRAITH LAW**  
25361 Commercentre Drive  
Suite 150  
Lake Forest, CA 92630  
Tel (949) 452-1234  
Fax (949) 452-1102

August 4, 2022

**NOTICE OF VIOLATIONS 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

**The Bu LLC**

**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:

1. **The Bu Lavender Raw Kombucha- Lead, Mercury**
2. **The Bu Strawberry Hibiscus Raw Kombucha - Lead, Mercury**
3. **The Bu Ginger Peach Raw Kombucha - Lead, Mercury**
4. **The Bu Tropical Raw Kombucha - Lead, Mercury**
5. **The Bu Honeydew Raw Kombucha - 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.

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.

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

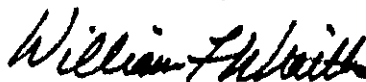
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least August 4, 2019, 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.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

William F. Wraith

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to The Bu LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by The Bu LLC**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

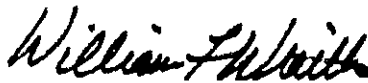
2. I am an attorney for the noticing party.

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.

Dated: August 4, 2022



---

William F. Wraith

**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 August 4, 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 the party 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  
The Bu LLC  
9073 Pulsar Ct, #A  
Corona, CA 92883

Ryan Mason  
(Registered Agent for The Bu LLC)  
9073 Pulsar Ct, #A  
Corona, CA 92883

On August 4, 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 August 4, 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

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

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

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

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

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



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

August 4, 2022

Page 5

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

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

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

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

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

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

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

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

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

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

August 4, 2022

Page 6

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

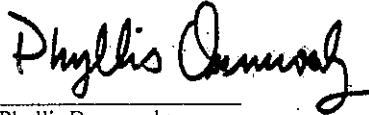
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On August 4, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on August 4, 2022, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

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

August 4, 2022

Service List

Page 7

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney,  
Amador County  
708 Court Street, Suite  
202  
Jackson, CA 95642

District Attorney, Butte  
County  
25 County Center Drive,  
Suite 245  
Orville, CA 95965

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

District Attorney, Del  
Norte County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El  
Dorado County  
778 Pacific St  
Placerville, CA 95667

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney,  
Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney,  
Imperial County  
940 West Main Street,  
Ste 102  
El Centro, CA 92243

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey  
Boulevard  
Hanford, CA 93230

District Attorney, Lake  
County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los  
Angeles County  
Hall of Justice  
211 West Tempe St.,  
Ste 1200  
Los Angeles, CA 90012

District Attorney,  
Madera County  
209 West Yosemite  
Avenue  
Madera, CA 93637

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Modoc  
County  
204 S Court Street,  
Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San  
Benito County  
419 Fourth Street, 2nd  
Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernardino, CA  
92415

District Attorney, San  
Mateo County  
400 County Ctr., 3rd  
Floor  
Redwood City, CA  
94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square,  
2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste  
4500  
Fairfield, CA 94533

District Attorney,  
Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney,  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney,  
Tuolumne County  
423 N. Washington  
Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite  
152  
Marysville, CA 95901

Los Angeles City  
Attorney's Office  
City Hall East  
200 N. Main Street, Suite  
800  
Los Angeles, CA 90012

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<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 WILLIAM F. WRAITH, SBN 185927  
2 WRAITH LAW  
3 25361 Commercentre Drive, Ste 150  
4 Lake Forest, CA 92630  
5 Tel: (949) 452-1234  
6 Email: bill@wraithlaw.com

7 Attorney for Plaintiff  
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ALAMEDA**

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

14 **Plaintiff,**

15 **vs.**

16 **THE BU LLC and DOES 1-100**

17 **Defendants.**

18 **CASE NO. 23CV027154**

19 **PROOF OF SERVICE**

20 I am a citizen of the United States, over the age of eighteen years, and not a party to or  
21 interested in the above captioned case. I am an employee of Environmental Research Center,  
22 Inc., and my business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. On October 3,  
23 2023, I served the foregoing document described as:

24 **NOTICE OF ENTRY OF JUDGMENT**

25 On the person (s) designated below:

26 **SCOTT HALL**  
27 **COBLENTZ PATCH DUFFY & BASS LLP**  
28 **One Montgomery Street, Suite 3000**  
**San Francisco, CA 94104**  
**Email: shall@coblentzlaw.com**

1 [X] **BY E-SERVICE:** I electronically served such document on the addressee at the  
2 electronic service address listed above by One Legal, an electronic service provider.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
4 true and correct. Executed October 3, 2023, at Fort Oglethorpe, Georgia.

5  
6   
7 \_\_\_\_\_  
8 Myra Heptinstall  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28