

**Michael Freund & Associates**

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Michael Freund, Esq.

October 1, 2020

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Kitu Life, Inc., individually and dba Super Coffee**

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

- 1. Kitu Super Espresso Bold & Smooth Unsweetened Triple Shot - Lead**
- 2. Kitu Super Coffee Protein + MCT Oil Naturally Sweetened Vanilla - Lead**
- 3. Kitu Super Coffee Protein + MCT Oil Naturally Sweetened Hazelnut - Lead**
- 4. Kitu Super Coffee Protein + MCT Oil Unsweetened Original - Lead**
- 5. Kitu Super Coffee Protein + MCT Oil Naturally Sweetened Mocha - Lead**
- 6. Kitu Super Cold Brew Bold & Smooth Unsweetened Black – Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least October 1, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [freund1@aol.com](mailto:freund1@aol.com).**

Sincerely,



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Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Kitu Life, Inc., individually and dba Super Coffee 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 Kitu Life, Inc., individually and dba Super Coffee**

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: October 1, 2020

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Michael Freund

**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 October 1, 2020 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Kitu Life, Inc., individually and  
dba Super Coffee  
1412 Broadway, Fl 21  
New York, NY 10018

Capitol Services, Inc.  
(Registered Agent for Kitu Life, Inc., individually  
and dba Super Coffee)  
1675 S State Street, Ste B  
Dover, DE 19901

Current President or CEO  
Kitu Life, Inc., individually and  
dba Super Coffee  
1732 1st Ave, #25614  
New York, NY 10128

On October 1, 2020 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 October 1, 2020 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

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

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

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

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

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

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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@sdcca.org

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

Alethea Sargent, Assistant District Attorney  
White Collar Division  
San Francisco District Attorney's Office  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, CA 94103  
alethea.sargent@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th 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, 4th Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney  
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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

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

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

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

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

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

On October 1, 2020 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 1, 2020, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

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

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**Service List**

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

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

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

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

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

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

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

District Attorney, Mariposa  
County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Sierra  
County  
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Floor  
Downieville, CA 95936

District Attorney, Colusa  
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346 Fifth Street Suite 101  
Colusa, CA 95932

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

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

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450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, Merced  
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Merced, CA 95340

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

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

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

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

District Attorney, Fresno  
County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

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

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

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

District Attorney, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

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

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

District Attorney, Orange  
County  
401 West Civic Center Drive  
Santa Ana, CA 92701

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

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

District Attorney, Placer  
County  
10810 Justice Center Drive,  
Ste 240  
Roseville, CA 95678

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423 N. Washington Street  
Sonora, CA 95370

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

District Attorney, Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

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

District Attorney, Kings  
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Hanford, CA 93230

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

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200 N. Main Street, Suite 800  
Los Angeles, CA 90012

District Attorney, Lake County  
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Lakeport, CA 95453

District Attorney, San  
Bernardino County  
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San Bernadino, CA 92415

San Jose City Attorney's  
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200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

District Attorney, Los Angeles  
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211 West Temple St., Ste 1200  
Los Angeles, CA 90012