

Michael Freund & Associates

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Michael Freund, Esq.

February 23, 2023

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

Dear Alleged Violators 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Health-Ade LLC
First Beverage Group, LLC
First Beverage Group, L.P.**

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. Health-Ade Pop Lemon Lime – Lead, Mercury**
- 2. Health-Ade Kombucha Watermelon – Lead**
- 3. Health-Ade Kombucha Cherry • Berry - Mercury**
- 4. Health-Ade Kombucha Berry Lemonade – Lead, Mercury**
- 5. Health-Ade Mixers Moscow Mule Mix A Kombucha Cocktail Mixer Ginger Lime Lemongrass- Lead**
- 6. Health-Ade Mixers Whiskey Sour Mix A Kombucha Cocktail Mixer Citrus Cherry Bitters – 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 February 23, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they 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 Violators 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 Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Health-Ade LLC, First Beverage Group, LLC, First Beverage Group, L.P., and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Health-Ade LLC, First Beverage Group, LLC, and First Beverage Group, L.P.

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: February 23, 2023



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 February 23, 2023, 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 President or CEO
Health-Ade LLC
2012 Abalone Ave
Torrance, CA 90501

Current President or CEO
First Beverage Group, LLC
1800 Avenue of the Stars, Ste 1400
Los Angeles, CA 90067

Current President or CEO
Health-Ade LLC
24325 Crenshaw Blvd, #128
Torrance, CA 90505

Current President or CEO
First Beverage Group, L.P.
11100 Santa Monica Blvd, Ste 850
Los Angeles, CA 90025

Jack Belsito
(Registered Agent for Health-Ade LLC)
2012 Abalone Ave
Torrance, CA 90501

Corporation Service Company Which Will
Do Business in California as CSC-Lawyers
Incorporating Service
(Registered Agent for First Beverage Group,
LLC)
2710 Gateway Oaks Dr, Ste 150 N
Sacramento, CA 95833

GKL Registered Agents of DE, Inc.
(Registered Agent for Health-Ade LLC)
3500 S Dupont Hwy
Dover, DE 19901

Corporation Service Company
(Registered Agent for First Beverage Group,
LLC)
251 Little Falls Drive
Wilmington, DE 19808

William S Anderson
(Registered Agent for First Beverage Group,
L.P.)
11100 Santa Monica Blvd, Ste 850
Los Angeles, CA 90025

On February 23, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

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

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On February 23, 2023 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

Barbara Yook, District Attorney
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San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Allison Haley, District Attorney
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Stacey Grassini, Deputy District Attorney
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consumerprotection@fresnocountyca.gov

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Santa Ana, CA 92703
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Independence, CA 93526
inyoda@inyocounty.us

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David Hollister, District Attorney
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Quincy, CA 95971
davidhollister@countyofplumas.com

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Riverside, CA 92501
Prop65@rivcoda.org

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550 West Main St
Merced, CA 95340
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Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
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Summer Stephan, District Attorney
San Diego County
330 West Broadway
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CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
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Alexandra.grayner@sfgov.org

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

Tori Verber Salazar, District Attorney
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County Government Center Annex, 4th Floor
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edobroth@co.slo.ca.us

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EPU@da.sccgov.org

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200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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701 Ocean Street
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Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney
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Jeannie.Barnes@sonoma-county.org

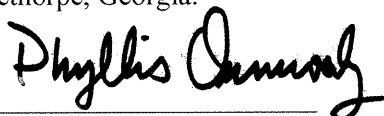
Phillip J. Cline, District Attorney
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231 S Mooney Blvd
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Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
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Ventura, CA 93009
daspecialops@ventura.org

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

On February 23, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on February 23, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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
Oroville, CA 95965

District Attorney, Colusa
County
310 6th 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 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92343

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
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Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
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Madera, CA 93637

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

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San Bernadino, CA 92415

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Redwood City, CA 94063

District Attorney, Shasta
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Redding, CA 96001

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Yuba City, CA 95991

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Sonora, CA 95370

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Marysville, CA 95901

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