

**Joseph Gonzalez**  
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**800 Hampshire Road, Suite B**  
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October 11, 2024

**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”). 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:

**Gutsy, Inc., f/k/a Gutsy LLC, individually and dba Culture Pop**

**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. Culture Pop Soda Fizzy & Gutsy Probiotic Soda Wild Berries & Lime - Lead**
- 2. Culture Pop Soda Fizzy & Gutsy Probiotic Soda Ginger Lemon & Turmeric - Lead**
- 3. Culture Pop Soda Fizzy & Gutsy Probiotic Soda Strawberry & Rhubarb - 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.

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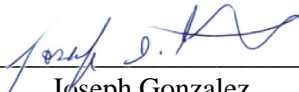
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least October 11, 2021, 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 expensive and time-consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

  
\_\_\_\_\_  
Joseph Gonzalez

Attorney for Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Gutsy, Inc., f/k/a Gutsy LLC, individually and dba Culture Pop and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Gutsy, Inc., f/k/a Gutsy LLC, individually and dba Culture Pop**

I, Joseph Gonzalez, hereby declare:

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

2. I am an attorney for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 11, 2024

  
\_\_\_\_\_  
Joseph Gonzalez

**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 11, 2024, 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  
Gutsy, Inc., f/k/a Gutsy LLC, individually  
and dba Culture Pop  
437 Nashawtuc Rd  
Concord, MA 01742

CT Corporation System  
(Registered Agent for Gutsy, Inc., f/k/a Gutsy LLC,  
individually and dba Culture Pop)  
155 Federal St, Ste 700  
Boston, MA 02110

Current President or CEO  
Gutsy, Inc., f/k/a Gutsy LLC, individually  
and dba Culture Pop  
PO Box 141  
Sudbury, MA 01776

The Corporation Trust Company  
(Registered Agent for Gutsy, Inc., f/k/a Gutsy LLC,  
individually and dba Culture Pop)  
1209 N. Orange St  
Wilmington, DE 19801

On October 11, 2024, 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On October 11, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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:

Pamela Y. Price, 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

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

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Contra Costa County  
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Martinez, CA 94553  
sgrassini@contracostada.org

James Clinchard, Assistant District Attorney  
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Placerville, CA 95667  
EDCDAPROP65@edcda.us

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

Thomas L. Hardy, District Attorney  
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inyoda@inyocounty.us

Devin Chandler, Program Coordinator  
Lassen County  
2950 Riverside Dr  
Susanville, CA 96130  
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Lori E. Frugoli, District Attorney  
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3501 Civic Center Drive, Suite 145  
San Rafael, CA 94903  
consumer@marincounty.org

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Mariposa, CA 95338  
mcda@mariposacounty.org

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550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

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

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1127 First Street, Ste C  
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CEPD@countyofnapa.org

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

Todd Spitzer, District Attorney  
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Santa Ana, CA 92703  
Prop65notice@ocdapa.org

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10810 Justice Center Drive  
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Sacramento, CA 95814  
Prop65@sacda.org

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San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

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

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

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

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

Henry Lifton, Deputy City Attorney  
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1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Prop65@sfcityatt.org

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Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Tori Verber Salazar, District Attorney  
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Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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edobroth@co.slo.ca.us

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

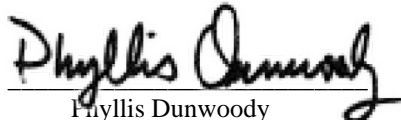
Gregory D. Totten, District Attorney  
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800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Bud Porter, Supervising Deputy District Attorney  
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70 W Hedding St  
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EPU@da.sccgov.org

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

On October 11, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 11, 2024, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
17300 Hwy 89  
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 6<sup>th</sup> St  
Colusa, CA 95932

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

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  
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El Centro, CA 92243

District Attorney, Kern County  
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Bakersfield, CA 93301

District Attorney, Kings  
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Hanford, CA 93230

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255 N. Forbes Street  
Lakeport, CA 95453

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

District Attorney, Madera  
County  
300 South G Street, Ste 300  
Madera, CA 93637

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  
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Bridgeport, CA 93517

District Attorney, San Benito  
County  
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Hollister, CA 95023

District Attorney, San  
Bernardino County  
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San Bernadino, 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  
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Floor  
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District Attorney, Siskiyou  
County  
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Fairfield, CA 94533

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Marysville, CA 95901

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