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12

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF ALAMEDA**

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

19 **Plaintiff,**

20 **vs.**

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

23 **Defendants.**

CASE NO. 23CV025570

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 11, 2023

Trial Date: None set

24
25 **1. INTRODUCTION**

26 **1.1** On January 11, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”), a
27 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
28 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)

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

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

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

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

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

1 alleged violations.

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

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

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

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

19 **2. JURISDICTION AND VENUE**

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

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

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

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

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

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

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

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

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

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

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

6 **TABLE 1**

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

9
 10 **3.2 Clear and Reasonable Warnings**

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

13 **OPTION 1:**

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

17 **OPTION 2:**

18  **WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov

19
 20 Black Rifle Coffee Company shall use the phrase “cancer and” in the Warning if Black
 21 Rifle Coffee Company has reason to believe that the “Daily Lead Exposure Level” is greater than
 22 15 micrograms of lead as determined pursuant to the quality control methodology set forth in
 23 Section 3.4 or if Black Rifle Coffee Company has reason to believe that another Proposition 65
 24 chemical is present which may require a cancer warning. For the Option 2 Warning, a symbol
 25 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline
 26 shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
 27 word “**WARNING.**” Where the sign, label or shelf tag for the product is not printed using the
 28 color yellow, the symbol may be printed in black and white. For the Option 1 Warning, as

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

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

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

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

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

1 container or wrapper.

2 **3.3 Conforming Covered Products**

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

10 **3.4 Testing and Quality Control Methodology**

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

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

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

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

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

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

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

17 **4. SETTLEMENT PAYMENT**

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

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

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

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

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

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

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

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

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

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

26 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

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

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

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

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

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

6 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

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

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

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

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

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

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

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

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

8 **10. GOVERNING LAW**

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

11 **11. PROVISION OF NOTICE**

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

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

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

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

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

8 **12. COURT APPROVAL**

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

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

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

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

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

///

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

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

6 **16. ENFORCEMENT**

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

11 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

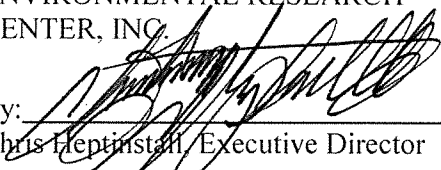
1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

4 **IT IS SO STIPULATED:**

5
6 Dated: 2/28/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

7
8 By: 
9 Chris Heptinstall, Executive Director

10
11 Dated: 2/28/2023, 2023

BLACK RIFLE COFFEE COMPANY LLC

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

17 Dated: 2/28/2023, 2023

BRC INC.

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

23 Dated: 2/28/2023, 2023

BRCC OPERATING COMPANY LLC

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

1 **APPROVED AS TO FORM:**

2

3

Dated: February 28, , 2023

LOZEAU | DRURY LLP

4

5

By:  _____

6

Richard T. Drury
Brian B. Flynn
Attorneys for Plaintiff Environmental
Research Center, Inc.

7

8

9

Dated: February 28 , 2023

HOLLAND & HART LLP

10

11

By:  _____

12

Brent E. Johnson
Attorney for Defendants Black Rifle
Coffee Company LLC, BRC Inc., and
BRCC Operating Company LLC

13

14

15

16

17

ORDER AND JUDGMENT

18

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

20

IT IS SO ORDERED, ADJUDGED AND DECREED.

21

22

Dated: _____, 2023

Judge of the Superior Court

23

24

25

26

27

28

EXHIBIT A



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
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and BRCC Operating Company LLC
355 Spencer Lane, Suite 101
San Antonio, TX 78201

Current CEO or President
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and BRCC Operating Company LLC
1144 S 500 W
Salt Lake City, UT 84101

Current CEO or President
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and BRCC Operating Company LLC
755 Lillard Dr
Sparks, NV 89434

CT Corporation System
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Coffee Company LLC)
330 N Brand Blvd, Suite 700
Glendale, CA 91203

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

The Corporation Trust Company
(Registered Agent for Black Rifle
Coffee Company LLC and BRCC Operating
Company LLC)
Corporation Trust Center
1209 N. Orange Street
Wilmington, DE 19801

VIA CERTIFIED MAIL

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July 6, 2022

Page 2

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Valerie Lopez, Deputy City Attorney
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VIA ELECTRONIC MAIL

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Stockton, CA 95202
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daspecialops@ventura.org

Jeff W. Reisig, District Attorney
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301 Second Street
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cfepd@yolocounty.org

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

Black Rifle Coffee Company LLC

BRC Inc.

BRCC Operating Company LLC

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **CC17 Combat Cocoa – Lead, Cadmium**
- **Black Rifle Coffee Company Espresso Mocha - Lead, Mercury**
- **Black Rifle Coffee Company Espresso With Cream - Lead**

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

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

July 6, 2022

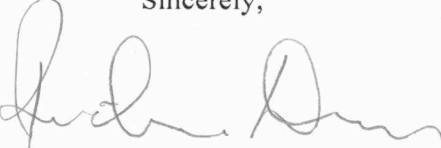
Page 5

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium and/or mercury. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium and/or mercury. Each of these ongoing violations has occurred on every day since July 6, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

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

Sincerely,



Richard Drury

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Black Rifle Coffee Company LLC, BRC Inc., BRCC Operating Company LLC and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

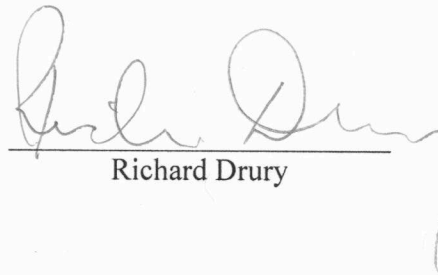
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Black Rifle Coffee Company LLC, BRC Inc., and BRCC Operating Company LLC

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 6, 2022


Richard Drury

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Black Rifle Coffee Company LLC; BRC Inc.;
and BRCC Operating Company LLC
355 Spencer Lane, Suite 101
San Antonio, TX 78201

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

Current CEO or President
Black Rifle Coffee Company LLC; BRC Inc.;
and BRCC Operating Company LLC
1144 S 500 W
Salt Lake City, UT 84101

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

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

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

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(Registered Agent for Black Rifle
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330 N Brand Blvd, Suite 700
Glendale, CA 91203

The Corporation Trust Company
(Registered Agent for Black Rifle
Coffee Company LLC and BRCC Operating
Company LLC)
Corporation Trust Center
1209 N. Orange Street
Wilmington, DE 19801

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

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891 Mountain Ranch Road
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

July 6, 2022

Page 9

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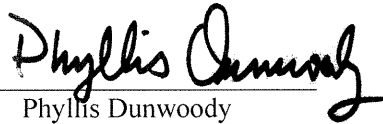
Notice of Violations of California Health & Safety Code §25249.5 et seq.

July 6, 2022

Page 10

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on July 6, 2022, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

July 6, 2022

Page 11

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
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Suite 245
Oroville, CA 95965

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

District Attorney,
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APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ 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

¹ 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.

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 contaminant² 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.

² 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.

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.