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

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

20 **Plaintiff,**

21 **vs.**

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

23 **Defendants.**

CASE NO. 23CV027154

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 2, 2023

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On February 2, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”), a
26 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
27 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
28 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

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

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

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

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

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

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

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

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

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

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

17 **2. JURISDICTION AND VENUE**

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

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

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

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

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

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

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

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

3 **3.2 Clear and Reasonable Warnings**

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

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

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

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

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

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

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

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

9 **3.3 Conforming Covered Products**

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

16 **3.4 Testing and Quality Control Methodology**

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

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

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

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

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

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

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

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

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

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

11 **4. SETTLEMENT PAYMENT**

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

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

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

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

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

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

8 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

1 motion or application.

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

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

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

21 **7. APPLICATION OF CONSENT JUDGMENT**

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

28 ///

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

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

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

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

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

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

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

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

12 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
13 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
14 exposures to lead and/or mercury in the Covered Products as set forth in the Notice and
15 Complaint.

16 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
17 environmental exposures arising under Proposition 65, nor shall it apply to any of The Bu's
18 products other than the Covered Products.

19 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

23 **10. GOVERNING LAW**

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

26 **11. PROVISION OF NOTICE**

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

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

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

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

8 With a copy to:

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

15 **THE BU LLC:**

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

22 **12. COURT APPROVAL**

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

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

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

13. EXECUTION AND COUNTERPARTS

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

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

3 **14. DRAFTING**

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

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

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

18 **16. ENFORCEMENT**

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

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

7 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

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

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1 **IT IS SO STIPULATED:**

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3 Dated: 6/21, 2023

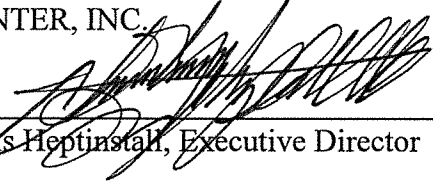
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ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

8 Dated: May 31, 2023

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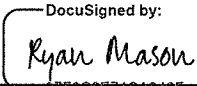
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THE BU LLC

DocuSigned by:

By: Ryan Mason
Its: CEO

14 **APPROVED AS TO FORM:**

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16 Dated: June 1, 2023


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WRAITH LAW

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

21 Dated: May 30, 2023

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COBLENTZ PATCH DUFFY & BASS
LLP

By: 
Scott Hall
Attorney for Defendant The Bu LLC

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2023 _____
Judge of the Superior Court

EXHIBIT A

WRAITH LAW

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

August 4, 2022

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

The Bu LLC

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

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

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 4, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

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

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to The Bu LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

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

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: August 4, 2022



William F. Wraith

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
The Bu LLC
9073 Pulsar Ct, #A
Corona, CA 92883

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

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Barbara Yook, District Attorney
Calaveras County
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Thomas L. Hardy, District Attorney
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Independence, CA 93526
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Stacey Grassini, Deputy District Attorney
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Michelle Latimer, Program Coordinator
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Susanville, CA 96130
mlatimer@co.lassen.ca.us

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

August 4, 2022

Page 5

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

Allison Haley, District Attorney
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Napa, CA 94559
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Clifford H. Newell, District Attorney
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Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney
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Santa Ana, CA 92703
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney
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Riverside, CA 92501
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SanDiegoDAProp65@sdcca.org

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

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San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
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San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

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

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edobroth@co.slo.ca.us

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Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

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

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

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

August 4, 2022

Page 6

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

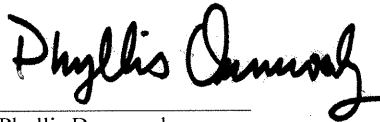
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

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



Phyllis Dunwoody

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 92243

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

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

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

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

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

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

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

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

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

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

District Attorney, San
Bernardino County
303 West Third Street
San 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
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2nd Floor
Downieville, CA 95936

District Attorney,
Siskiyou County
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Yreka, CA 96097

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County
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4500
Fairfield, CA 94533

District Attorney,
Stanislaus County
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Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney,
Tehama County
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Red Bluff, CA 96080

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

District Attorney,
Tuolumne County
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Street
Sonora, CA 95370

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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