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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF ALAMEDA**

20 **ENVIRONMENTAL RESEARCH**
21 **CENTER, INC., a California non-profit**
22 **corporation**

23 **Plaintiff,**

24 **vs.**

25 **RISEANDSHINE CORPORATION,**
26 **individually and dba RISE BREWING CO.;**
27 **and DOES 1-100**

28 **Defendants.**

CASE NO. 23CV031518

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 18, 2023

Trial Date: None set

1. INTRODUCTION

1.1 On April 18, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against RiseandShine Corporation, individually and dba Rise Brewing Co.
2 (“Rise Brewing Co.”) and Does 1-100. In this action, ERC alleges that a number of products
3 manufactured, distributed, or sold by Rise Brewing Co. contain lead and/or mercury, chemicals
4 listed under Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers
5 to these chemicals at a level requiring a Proposition 65 warning. These products (referred to
6 hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are the
7 following flavored coffee beverages manufactured, distributed, or sold by Rise Brewing Co.::
8 (1) Rise Brewing Co. Oat Milk Mocha Nitro Cold Brew Coffee Dairy Free (lead), (2) Rise
9 Brewing Co. Oat Milk Latte Organic Cold Brew Coffee Dairy Free Caffeine Level 2 (lead), (3)
10 Rise Brewing Co. Oat Milk Vanilla Organic Cold Brew Coffee Dairy Free Caffeine Level 2
11 (lead, mercury), and (4) Rise Brewing Co. Organic Oat Milk Original Dairy Free (lead,
12 mercury).

13 **1.2** ERC and Rise Brewing Co. are hereinafter referred to individually as a “Party”
14 or collectively as the “Parties.”

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

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

23 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
24 dated January 5, 2023 and January 20, 2023 that were served on the California Attorney
25 General, other public enforcers, and Rise Brewing Co. (“Notices”). True and correct copies of
26 the 60-Day Notices dated January 5, 2023 and January 20, 2023 are attached hereto as
27 **Exhibits A and B** and each is incorporated herein by reference. More than 60 days have passed
28 since the Notices were served on the Attorney General, public enforcers, and Rise Brewing Co.

1 and no designated governmental entity has filed a Complaint against Rise Brewing Co. with
2 regard to the Covered Products or the alleged violations.

3 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
4 California consumers exposes them to lead and/or mercury without first receiving clear and
5 reasonable warnings from Rise Brewing Co., which is in violation of California Health and
6 Safety Code section 25249.6. Rise Brewing Co. denies all material allegations contained in the
7 Notices and Complaint and maintains it is and has always been in compliance with California
8 Health and Safety Code section 25249.5 *et seq.*

9 **1.7** The Parties have entered into this Consent Judgment in order to settle,
10 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
11 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
12 or be construed as an admission by any of the Parties or by any of their respective officers,
13 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
14 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
15 issue of law, or violation of law. This Consent Judgment is the product of negotiation and
16 compromise and is accepted by the Parties solely for the purpose of settling, compromising,
17 and resolving the issues in dispute in this action.

18 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
20 any current or future legal proceeding unrelated to these proceedings.

21 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
22 as a Judgment by this Court. The Compliance Date of this Consent Judgment is the latter of the
23 Effective Date or January 26, 2024.

24 **2. JURISDICTION AND VENUE**

25 For purposes of this Consent Judgment and any further court action that may become
26 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
27 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
28 over Rise Brewing Co. as to the acts alleged in the Complaint, that venue is proper in Alameda

1 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
2 resolution of all claims up through and including the Effective Date that were or could have been
3 asserted in this action based on the facts alleged in the Notices and Complaint.

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

5 **3.1** Beginning on the Compliance Date, Rise Brewing Co. shall be permanently
6 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
7 California,” or directly selling in the State of California, any Covered Product that exposes a
8 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
9 “Daily Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it
10 meets the warning requirements under Section 3.2, as determined based on the Testing and
11 Quality Control Methodology in Section 3.4.

12 **3.1.1** As used in this Consent Judgment, the terms “Distributing into the State
13 of California” and “Distributed into the State of California” shall mean to directly ship a
14 Covered Product into California for sale in California or to sell a Covered Product to a
15 distributor that Rise Brewing Co. knows will sell the Covered Product in California.

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

23 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
24 Level” shall be measured in micrograms, and shall be calculated using the following formula:
25 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
26 product (using the largest serving size appearing on the product label), multiplied by servings
27 of the product per day (using the largest number of recommended daily servings appearing on
28 the label), which equals micrograms of mercury exposure per day. If the label contains no

1 recommended daily servings, then the number of recommended daily servings shall be one.

2 **3.2 Clear and Reasonable Warnings**

3 If Rise Brewing Co. is required to provide a warning pursuant to Section 3.1, the
4 following warning must be utilized (“Warning”):

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

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

16 The Warning shall be securely affixed to or printed upon the label of each Covered
17 Product and it must be set off from other surrounding information and enclosed in a box.
18 In addition, for any Covered Product sold over the internet, the Warning shall be provided by
19 including either the Warning or a clearly marked hyperlink using the word “**WARNING**” in
20 all capital and bold letters on the Covered Product’s primary product display page, or by
21 otherwise prominently displaying the Warning to the customer prior to completing the
22 purchase. If the Warning is provided by a clearly marked hyperlink, the hyperlink must go
23 directly to a page prominently displaying the Warning without content that detracts from the
24 Warning. A Warning is not prominently displayed if the purchaser has to search for it in the
25 general content of the website. If the Warning is provided on the checkout page, when a
26 California delivery address is indicated for any purchase of any Covered Product, an asterisk or
27 other identifying method must be utilized to identify which products on the checkout page are
28 subject to the Warning.

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

7 Rise Brewing Co. must display the above Warning with such conspicuousness, as
8 compared with other words, statements or designs on the label, or on its website, if applicable, to
9 render the Warning likely to be read and understood by an ordinary individual under customary
10 conditions of purchase or use of the product. Where a sign or label used to provide the Warning
11 for a Covered Product includes consumer information about the Covered Product in a language
12 other than English, the Warning must also be provided in that language in addition to English.

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

16 **3.3 Conforming Covered Products**

17 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
18 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Mercury Exposure
19 Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure
20 methodology set forth in Section 3.1.2 and based on the quality control methodology described in
21 Section 3.4.

22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** Beginning within one year after the Effective Date, Rise Brewing Co.
24 shall arrange for lead and mercury testing of the Covered Products at least once a year for a
25 minimum of two (2) consecutive years by arranging for testing of three (3) randomly selected
26 samples of each of the Covered Products, in the form intended for sale to the end-user, which
27 Rise Brewing Co. intends to sell or is manufacturing for sale in California, directly selling to a
28 consumer in California or “Distributing into the State of California.” If tests conducted pursuant

1 to this Section demonstrate that no Warning is required for a Covered Product during each of two
2 (2) consecutive years, then the testing requirements of this Section will no longer be required as
3 to that Covered Product. However, if during or after the two-year testing period, Rise Brewing
4 Co. changes ingredient suppliers for any of the Covered Products and/or materially changes the
5 formula of any of the Covered Products, Rise Brewing Co. shall test that Covered Product
6 annually for at least two (2) consecutive years after such change is made.

7 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
8 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three
9 (3) randomly selected samples of the Covered Products will be controlling.

10 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
11 laboratory method that complies with the performance and quality control factors appropriate
12 for the method used, including limit of detection and limit of quantification, sensitivity,
13 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
14 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
15 mg/kg.

16 **3.4.4** If Rise Brewing Co. in its sole discretion finds an outlier result when
17 performing the analysis, for lead and/or mercury only, in Section 3.4.1, it may select an
18 entirely different set of three (3) randomly selected samples of the Covered Product at issue,
19 and the highest lead or mercury detection result, as applicable, of the three randomly selected
20 samples will then be controlling. If Rise Brewing Co. selects an entirely different set of three
21 (3) randomly selected samples based on this Section, Rise Brewing Co. shall notify ERC in
22 writing that it has done so and shall, if requested by ERC in writing, and within thirty (30) days
23 of such request, provide the original set of three (3) tests, showing the outlier, to ERC pursuant
24 to any written request for tests in Section 3.4.7 or pursuant to providing test results as required
25 in Section 6.2. For purposes of this Section, an outlier is a test whose result for lead or
26 mercury, as applicable, is more than two times the result of the next highest result for lead or
27 mercury, as applicable.

28 **3.4.5** All testing pursuant to this Consent Judgment shall be performed by an

1 independent third party laboratory certified by the California Environmental Laboratory
2 Accreditation Program or an independent third-party laboratory that is registered with the
3 United States Food & Drug Administration.

4 **3.4.6** Nothing in this Consent Judgment shall limit Rise Brewing Co.'s ability
5 to conduct, or require that others conduct, additional testing of the Covered Products, including
6 the raw materials used in their manufacture.

7 **3.4.7** Within thirty (30) days of ERC's written request, Rise Brewing Co. shall
8 deliver lab reports obtained pursuant to Section 3.4, including any original and/or outlier lab
9 results referenced in Section 3.4.4, to ERC. Rise Brewing Co. shall retain all test results and
10 documentation for a period of two (2) years from the date of each test.

11 **3.5** Nothing in Section 3 of this Consent Judgment shall preclude ERC from
12 conducting its own testing for purposes of enforcement, so long as such testing meets the
13 requirements of Sections 3.4.3 and 3.4.5.

14 **4. SETTLEMENT PAYMENT**

15 **4.1** In full satisfaction of all potential civil penalties, additional settlement
16 payments, attorney's fees, and costs, Rise Brewing Co. shall make a total payment of
17 \$100,000.00 ("Total Settlement Amount") to ERC in two periodic payments (the "Periodic
18 Payments") according to the following payment schedule ("Due Dates"):

- 19 • Payment 1 -- \$50,000.00 within 10 days of the Effective Date
- 20 • Payment 2 -- \$50,000.00 within 45 days of the Effective Date.

21 Rise Brewing Co. shall make these payments by wire transfer to ERC's account. ERC will
22 give Rise Brewing Co. the necessary account information at least five (5) days prior to the first
23 Due Date. Rise Brewing Co. shall be excused from any payment for the duration of time ERC
24 fails to provide the necessary account information. The Total Settlement Amount shall be
25 apportioned as follows:

26 **4.2** \$22,500.00 shall be considered a civil penalty pursuant to California Health and
27 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$16,875.00) of the civil penalty to
28 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe

1 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
2 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,625.00) of the civil penalty.

3 **4.3** \$4,038.20 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 **4.4** \$16,500.00 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 Defendant 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 dietary supplement products in California. ERC’s activities have had, and will continue to
11 have, a direct and primary effect within the State of California because California consumers
12 will be benefitted by the reduction and/or elimination of exposure to lead 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 mercury and are sold to California
20 consumers. This work includes continued monitoring and enforcement of past consent
21 judgments and settlements to ensure companies are in compliance with their obligations
22 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
23 mercury. This work also includes investigation of new companies that ERC does not obtain
24 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
25 (up to 10-20%): maintaining ERC’s Voluntary Compliance Program by acquiring products
26 from companies, developing and maintaining a case file, testing products from these
27 companies, providing the test results and supporting documentation to the companies, and
28 offering guidance in warning or implementing a self-testing program for lead and/or mercury

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

7 ERC shall be fully accountable in that it will maintain adequate records to document
8 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
9 are being spent only for the proper, designated purposes described in this Consent Judgment.

10 ERC shall provide the Attorney General, within thirty days of any request, copies of
11 documentation demonstrating how such funds have been spent.

12 **4.5** \$16,639.00 shall be distributed to Aqua Terra Aeris Law Group as
13 reimbursement of ERC’s attorney’s fees, while \$40,322.80 shall be distributed to ERC for its
14 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
15 costs.

16 **4.6** In the event that Rise Brewing Co. fails to remit, in full, any of the Periodic
17 Payments owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable
18 Due Date, Rise Brewing Co. shall be deemed to be in material breach of its obligations under
19 this Consent Judgment. ERC shall provide written notice of the delinquency to Rise Brewing Co.
20 via electronic mail. If Rise Brewing Co. fails to deliver the delinquent payment within five (5)
21 days from the written notice, the Total Settlement Amount, less any amounts previously paid
22 pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the
23 statutory judgment interest rate provided in the California Code of Civil Procedure section
24 685.010. Additionally, Rise Brewing Co. agrees to pay ERC’s reasonable attorney’s fees and
25 costs for any efforts to collect the payments due under 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 written
28 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by

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

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

16 **5.3** In the event that Rise Brewing initiates or otherwise requests a modification
17 under Section 5.1, and the meet and confer process leads to a joint motion or joint application
18 for a modification of the Consent Judgment, then Rise Brewing shall reimburse ERC its costs
19 and reasonable attorneys’ fees for the time spent in the meet and confer process and in filing
20 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 Rise Brewing Co. its test results within sixty (60) days thereof, including a copy of all
28 ERC test results and the information sufficient to permit Rise Brewing Co. to identify the

1 Covered Products at issue (including lot numbers of the Covered Products tested if available on
2 the labeling or packaging for the Covered Product). Rise Brewing Co. shall, within thirty (30)
3 days following such notice, provide ERC with testing information, from an independent third-
4 party laboratory meeting the requirements of Sections 3.4.3 and 3.4.5, demonstrating Rise
5 Brewing Co.'s compliance with the Consent Judgment. The Parties shall first attempt to
6 resolve the matter prior to ERC taking any further legal action.

7 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

1 implementing regulations arising from the failure to provide Proposition 65 warnings on the
2 Covered Products regarding lead and/or mercury up to and including the Effective Date.

3 **8.3** ERC on its own behalf only, and Rise Brewing Co. on its own behalf only,
4 further waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of
6 Proposition 65 in connection with the Notices 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 Notices and Complaint, and relating to the Covered Products, will develop or be
11 discovered. ERC on behalf of itself only, and Rise Brewing Co. on behalf of itself only,
12 acknowledge that this Consent Judgment is expressly intended to cover and include all such
13 claims up through and including the Effective Date, including all rights of action therefore.
14 ERC and Rise Brewing Co. acknowledge that the claims released in Sections 8.2 and 8.3 above
15 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
16 any such unknown claims. California Civil Code section 1542 reads as follows:

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

21 ERC on behalf of itself only, and Rise Brewing Co. on behalf of itself only, acknowledge and
22 understand the significance and consequences of this specific waiver of California Civil Code
23 section 1542.

24 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
25 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
26 exposures to lead and/or mercury in the Covered Products as set forth in the Notices and
27 Complaint.

28 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or

1 environmental exposures arising under Proposition 65, nor shall it apply to any of Rise
2 Brewing Co.'s products other than the Covered Products sold in California, manufactured for
3 sale in the State of California, or "Distributed into the State of California."

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

11 **10.2** In the event that Proposition 65, either as a whole or as specifically applicable to
12 the Covered Products or listed chemicals at issue in this case, is repealed or federally preempted,
13 or if new or different safe harbor levels are established as applicable to the Covered Products, or if
14 Proposition 65 is otherwise rendered inapplicable to the Covered Products or listed chemicals at
15 issue in this case, all by any final regulation or statute, or by a decision of the California Supreme
16 Court, or if any of the provisions of this Consent Judgment are specifically rendered inapplicable
17 or no longer required as to the Covered Products as a result of any such regulatory or statutory
18 change, repeal or preemption or decision of the California Supreme Court, or due to federal laws
19 or regulations, then Rise Brewing Co. may provide written notice to ERC of any asserted change
20 in the law, and it shall have no further obligations pursuant to this Consent Judgment with respect
21 to the Covered Products, to the extent that the Covered Products are so affected and subject to
22 ERC's right to seek enforcement of the Consent Judgment.

23 **11. PROVISION OF NOTICE**

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

27 ///

28 ///

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

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

7 With a copy to:

8 Matthew C. Maclear
9 Anthony M. Barnes
10 Aqua Terra Aeris Law Group
11 4030 Martin Luther King Jr. Way
12 Oakland, CA 94609
13 Telephone: (415) 568-5200
14 Email: mcm@atalawgroup.com
15 amb@atalawgroup.com

16 **FOR RISEANDSHINE CORPORATION, individually and dba RISE BREWING CO.:**

17 Grant Gyesky
18 Co-Founder & CEO
19 Rise Brewing Co.
20 425 Fairfield Ave
21 Stamford, CT 06902
22 Telephone: (203) 722-1969
23 Email: grant@risebrewingco.com

24 With a copy to:

25 Hazel Ocampo
26 Greenberg Traurig LLP
27 18565 Jamboree Road, Suite 500
28 Irvine, CA 92612
Telephone: (949) 732-6545
Email: ocampoh@gtlaw.com

12. COURT APPROVAL

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

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

1 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
2 void and have no force or effect.

3 **13. EXECUTION AND COUNTERPARTS**

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

7 **14. DRAFTING**

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

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

17 If a dispute arises with respect to either Party's compliance with the terms of this Consent
18 Judgment entered by the Court, the Parties shall meet and confer in person, via remote meeting,
19 by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No
20 action or motion may be filed in the absence of such a good faith attempt to resolve the dispute
21 beforehand for a period of at least sixty (60) days from the date the Party provides notice to the
22 other Party in the dispute in accordance with the notice provisions in Section 11.

23 **16. ENFORCEMENT**

24 Both parties may, by motion or order to show cause before the Superior Court of
25 Alameda County, enforce the terms and conditions contained in this Consent Judgment.

26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and understanding
28 of the parties with respect to the entire subject matter herein, including any and all prior

1 discussions, negotiations, commitments, and understandings related thereto. No representations,
2 oral or otherwise, express or implied, other than those contained herein have been made by any
3 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
4 deemed to exist or to bind any party.

5 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
7 specifically provided in this Consent Judgment, each Party shall bear its own attorneys' fees
8 and costs in connection with the claims resolved in this Consent Judgment.

9 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
10 **CONSENT JUDGMENT**

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

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

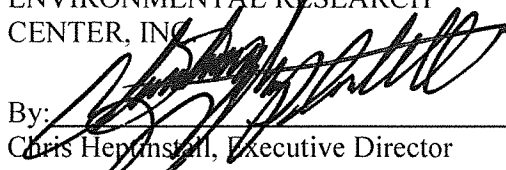
17 (2) Make the findings pursuant to California Health and Safety Code section
18 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

21 **IT IS SO STIPULATED:**

22
23 Dated: 11/22/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

24
25 By: 
26 Chris HepunSTALL, Executive Director

1 Dated: November 22, 2023

RISEANDSHINE CORPORATION,
individually and dba RISE BREWING CO.



By: Grant Gyesky
Its: CEO

7 **APPROVED AS TO FORM:**

9 Dated: November 27, 2023

AQUA TERRA AERIS LAW GROUP

By: 

Matthew C. Maclear
Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

15 Dated: November 22, 2023

GREENBERG TRAURIG LLP

By: 

Hazel Ocampo
Attorney for Defendant RiseandShine
Corporation, individually and dba Rise
Brewing Co.

21 **ORDER AND JUDGMENT**

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

24 IT IS SO ORDERED, ADJUDGED AND DECREED.

26 Dated: _____, 2024

Judge of the Superior Court

EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
917-371-8293

January 5, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

RiseandShine Corporation, individually and dba Rise Brewing Co.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 5, 2023
Page 2

- 1. Rise Brewing Co. Oat Milk Mocha Nitro Cold Brew Coffee Dairy Free - Lead**
- 2. Rise Brewing Co. Oat Milk Latte Organic Cold Brew Coffee Dairy Free Caffeine Level 2 – Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 5, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 5, 2023
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to RiseandShine Corporation, individually and dba Rise Brewing Co., and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 5, 2023
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by RiseandShine Corporation, individually and dba Rise Brewing Co.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

A handwritten signature in cursive script that reads "Matthew Maclear".

Dated: January 5, 2023

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 5, 2023
Page 5

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 January 5, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
RiseandShine Corporation, individually and
dba Rise Brewing Co.
7 Steep Hollow Lane
Cos Cob, CT 06807

BlumbergExcelsior Corporate Services, Inc.
(Registered Agent for RiseandShine Corporation,
individually and dba Rise Brewing Co.)
1013 Centre Rd, Ste 403S
Wilmington, DE 19805

Current President or CEO
RiseandShine Corporation, individually and
dba Rise Brewing Co.
425 Fairfield Ave, Building 4
Stamford, CT 06902

The Corporation
(Registered Agent for RiseandShine Corporation,
individually and dba Rise Brewing Co.)
243 West 14th St, Apt 1F
New York, NY 10011

Grant Gyesky
(Registered Agent for RiseandShine Corporation,
individually and dba Rise Brewing Co.)
7 Steep Hollow Lane
Cos Cob, CT 06807

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 5, 2023
Page 6

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

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

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

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

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

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

Allison Haley, District Attorney
Napa County
1127 First Street, Ste C
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@da.ocgov.com

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

Morgan Briggs Gire, District Attorney
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

David Hollister, District Attorney
Plumas County
520 Main St
Quincy, CA 95971
davidhollister@countyofplumas.com



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 5, 2023
Page 7

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
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County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

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

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

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

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

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

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



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

Executed on January 5, 2023, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a large, looped initial "P".

Phyllis Dunwoody



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

January 5, 2023

Page 9

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	

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.

EXHIBIT B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
917-371-8293

January 20, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

RiseandShine Corporation, individually and dba Rise Brewing Co.

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:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 2

- 1. Rise Brewing Co. Oat Milk Vanilla Organic Cold Brew Coffee Dairy Free Caffeine Level 2 – Lead, Mercury**
- 2. Rise Brewing Co. Organic Oat Milk Original Dairy Free – 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.

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 January 20, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The 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.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to RiseandShine Corporation, individually and dba Rise Brewing Co., and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by RiseandShine Corporation, individually and dba Rise Brewing Co.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large initial "M".

Dated: January 20, 2023

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 5

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 January 20, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
RiseandShine Corporation, individually and
dba Rise Brewing Co.
7 Steep Hollow Lane
Cos Cob, CT 06807

BlumbergExcelsior Corporate Services, Inc.
(Registered Agent for RiseandShine Corporation,
individually and dba Rise Brewing Co.)
1013 Centre Rd, Ste 403S
Wilmington, DE 19805

Current President or CEO
RiseandShine Corporation, individually and
dba Rise Brewing Co.
425 Fairfield Ave, Building 4
Stamford, CT 06902

The Corporation
(Registered Agent for RiseandShine Corporation,
individually and dba Rise Brewing Co.)
243 West 14th St, Apt 1F
New York, NY 10011

Grant Gyesky
(Registered Agent for RiseandShine Corporation,
individually and dba Rise Brewing Co.)
7 Steep Hollow Lane
Cos Cob, CT 06807

On January 20, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 6

On January 20, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

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

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

Stacey Grassini, Deputy District Attorney
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sgrassini@contracostada.org

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Napa, CA 94559
CEPD@countyofnapa.org

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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

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Morgan Briggs Gire, District Attorney
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Walter W. Wall, District Attorney
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Mariposa, CA 95338
mcda@mariposacounty.org

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 7

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
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Prop65@rivcoda.org

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SanDiegoDAProp65@sdca.org

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

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Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney
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Starla.Sousa@sfcityatty.org

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

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600 Administration Dr
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Jeannie.Barnes@sonoma-county.org

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

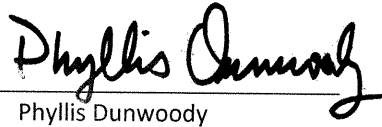
Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 8

On January 20, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 20, 2023, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 20, 2023
Page 9

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637		

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.