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15 LLC, and First Beverage Group, L.P.

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

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

21 **Plaintiff,**

22 **vs.**

23 **HEALTH-ADE LLC; FIRST BEVERAGE**
24 **GROUP, LLC; FIRST BEVERAGE**
25 **GROUP, L.P.; and DOES 1-100**

26 **Defendants.**

27 **CASE NO. 23CV034572**

28 **STIPULATED CONSENT**
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 30, 2023

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On May 30, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
5 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Health-Ade LLC, First Beverage Group, LLC, and First Beverage
2 Group, L.P. (collectively “Health-Ade”) and Does 1-100. In this action, ERC alleges that a
3 number of products manufactured, distributed, or sold by Health-Ade contain lead and/or
4 mercury, chemicals listed under Proposition 65 as carcinogens and/or reproductive toxins, and
5 expose consumers to these chemicals at a level requiring a Proposition 65 warning. These
6 products are the following flavored kombucha beverages (referred to hereinafter individually
7 as a “Covered Product” or collectively as “Covered Products”): (1) Health-Ade Pop Apple
8 Snap (lead, mercury), (2) Health-Ade Pop Strawberry Vanilla (lead, mercury), (3) Health-Ade
9 Pop Pomegranate Berry (lead, mercury), (4) Health-Ade Pop Juicy Grape (lead, mercury), (5)
10 Health-Ade Pop Ginger Fizz (lead, mercury), (6) Health-Ade Pop Lemon Lime (lead,
11 mercury), (7) Health-Ade Kombucha Watermelon (lead), (8) Health-Ade Kombucha Cherry •
12 Berry (mercury), (9) Health-Ade Kombucha Berry Lemonade (lead, mercury), (10) Health-
13 Ade Mixers Moscow Mule Mix A Kombucha Cocktail Mixer Ginger Lime Lemongrass (lead),
14 (11) Health-Ade Mixers Whiskey Sour Mix A Kombucha Cocktail Mixer Citrus Cherry Bitters
15 (lead, mercury), (12) Health-Ade Kombucha Ginger Pineapple Belly Reset (lead, mercury),
16 (13) Health-Ade Kombucha Strawberry Glow (lead, mercury), and (14) Health-Ade Kombucha
17 Citrus Immune Boost (lead).

18 **1.2** ERC and Health-Ade are hereinafter referred to individually as a “Party” or
19 collectively as the “Parties.”

20 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
21 causes, helping safeguard the public from health hazards by reducing the use and misuse of
22 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
23 and encouraging corporate responsibility.

24 **1.4** For purposes of this Consent Judgment, the Parties agree that Health-Ade is a
25 business entity that has employed ten or more persons at all times relevant to this action and
26 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
27 Health-Ade manufactures, distributes, and/or sells the Covered Products.

28 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation

1 dated February 10, 2023, February 23, 2023, and March 16, 2023 that were served on the
2 California Attorney General, other public enforcers, and Health-Ade (“Notices”). True and
3 correct copies of the 60-Day Notices dated February 10, 2023, February 23, 2023, and March
4 16, 2023 are attached hereto as **Exhibits A, B, and C** and each is incorporated herein by
5 reference. More than 60 days have passed since the Notices were served on the Attorney
6 General, public enforcers, and Health-Ade and no designated governmental entity has filed a
7 Complaint against Health-Ade with regard to the Covered Products or the alleged violations.

8 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
9 California consumers exposes them to lead and/or mercury without first receiving clear and
10 reasonable warnings from Health-Ade, which is in violation of California Health and Safety
11 Code section 25249.6. Health-Ade denies all material allegations contained in the Notices and
12 Complaint and maintains it is and has always been in compliance with California Health and
13 Safety Code section 25249.5 *et seq.*

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

23 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
24 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
25 any current or future legal proceeding unrelated to these proceedings.

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

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment and any further court action that may become
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
4 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
5 over Health-Ade as to the acts alleged in the Complaint, that venue is proper in Alameda County,
6 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
7 all claims up through and including the Effective Date that were or could have been asserted in
8 this action based on the facts alleged in the Notices and Complaint.

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

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

17 **3.1.1** As used in this Consent Judgment, the terms “Distributing into the State
18 of California” and “Distributed into the State of California” shall mean to directly ship a
19 Covered Product into California for sale in California or to sell a Covered Product to a
20 distributor that Health-Ade knows will sell the Covered Product in California.

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

28 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure

1 Level” shall be measured in micrograms, and shall be calculated using the following formula:
2 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
3 product (using the largest serving size appearing on the product label), multiplied by servings
4 of the product per day (using the largest number of recommended daily servings appearing on
5 the label), which equals micrograms of mercury exposure per day. If the label contains no
6 recommended daily servings, then the number of recommended daily servings shall be one.

7 **3.2 Clear and Reasonable Warnings**

8 If Health-Ade is required to provide a warning pursuant to Section 3.1, the following
9 warning must be utilized (“Warning”):

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

13 Health-Ade shall use the phrase “cancer and” in the Warning if Health-Ade has reason to
14 believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined
15 pursuant to the quality control methodology set forth in Section 3.4 or if Health-Ade has reason to
16 believe that another Proposition 65 chemical is present which may require a cancer warning. As
17 identified in the brackets, the warning shall appropriately reflect whether there is lead, mercury, or
18 both chemicals present in each of the Covered Products.

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

1 California delivery address is indicated for any purchase of any Covered Product, an asterisk or
2 other identifying method must be utilized to identify which products on the checkout page are
3 subject to the Warning.

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

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

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

19 **3.3 Conforming Covered Products**

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

25 **3.4 Testing and Quality Control Methodology**

26 **3.4.1.** Beginning within one year after the Compliance Date, Health-Ade shall
27 arrange for lead and mercury testing of the Covered Products at least once a year for a minimum
28 of two (2) consecutive years by arranging for testing of three (3) randomly selected samples of

1 each of the Covered Products, in the form intended for sale to the end-user, which Health-Ade
2 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
3 California or “Distributing into the State of California.” If tests conducted pursuant to this Section
4 demonstrate that no Warning is required for a Covered Product during each of two consecutive
5 years, then the testing requirements of this Section will no longer be required as to that Covered
6 Product. However, if during or after the two-year testing period, Health-Ade changes ingredient
7 suppliers for any of the Covered Products and/or materially changes the formula to any of the
8 Covered Products, Health-Ade shall test that Covered Product annually for at least two (2)
9 consecutive years after such change is made.

10 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
11 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three (3)
12 randomly selected samples of the Covered Products will be controlling.

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

18 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
19 independent third party laboratory certified by the California Environmental Laboratory
20 Accreditation Program or an independent third-party laboratory that is registered with the United
21 States Food & Drug Administration.

22 **3.4.5** If Health-Ade in its sole discretion finds an outlier result when
23 performing the analysis, for lead and/or mercury only, in Section 3.4.1, it may select an entirely
24 different set of three (3) randomly selected samples of the Covered Product at issue, and the
25 highest lead or mercury detection result, as applicable, of the three randomly selected samples
26 will then be controlling. If Health-Ade selects an entirely different set of three (3) randomly
27 selected samples, then Health-Ade shall notify ERC in writing that it has done so and shall
28 provide the original set of tests, showing the outlier, to ERC pursuant to any written request for

1 tests in Section 3.4.7 or pursuant to providing test results as required in Section 6.2. For
2 purposes of this Section, an outlier is a test whose result for lead or mercury, as applicable, is
3 more than two times the result of the next highest result for lead or mercury, as applicable.

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

7 **3.4.7** Within thirty (30) days of ERC's written request, Health-Ade shall deliver
8 lab reports obtained pursuant to Section 3.4 to ERC. Health-Ade shall retain all test results and
9 documentation for a period of two years from the date of each test.

10 **3.5** Nothing in Section 3 of this Consent Judgment shall preclude ERC from
11 conducting its own testing for purposes of enforcement, so long as such testing meets the
12 requirements of Sections 3.4.3 and 3.4.4.

13 **4. SETTLEMENT PAYMENT**

14 **4.1** In full satisfaction of all potential civil penalties, additional settlement
15 payments, attorney's fees, and costs, Health-Ade shall make a total payment of \$190,000.00
16 ("Total Settlement Amount") to ERC within ten (10) days of the Effective Date ("Due Date").
17 Health-Ade shall make this payment by wire transfer to ERC's account. ERC will give Health-
18 Ade the necessary account information at least five (5) days prior to the Due Date. Health-Ade
19 shall be excused from any payment due for the duration of time ERC fails to provide the
20 necessary account information. The Total Settlement Amount shall be apportioned as follows:

21 **4.2** \$35,000.00 shall be considered a civil penalty pursuant to California Health and
22 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$26,250.00) of the civil penalty to
23 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
24 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
25 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,750.00) of the civil penalty.

26 **4.3** \$18,241.85 shall be distributed to ERC as reimbursement to ERC for reasonable
27 costs incurred in bringing this action.

28 **4.4** \$25,000.00 shall be distributed to ERC as an Additional Settlement Payment

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

10 **4.5** Based on a review of past years’ actual budgets, ERC is providing the following
11 list of activities ERC engages in to protect California consumers through Proposition 65 citizen
12 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
13 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing
14 dietary supplement products that may contain lead and/or mercury and are sold to California
15 consumers. This work includes continued monitoring and enforcement of past consent
16 judgments and settlements to ensure companies are in compliance with their obligations
17 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
18 mercury. This work also includes investigation of new companies that ERC does not obtain
19 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
20 (up to 10-20%): maintaining ERC’s Voluntary Compliance Program by acquiring products
21 from companies, developing and maintaining a case file, testing products from these
22 companies, providing the test results and supporting documentation to the companies, and
23 offering guidance in warning or implementing a self-testing program for lead and/or mercury
24 in dietary supplement products; and (3) “GOT LEAD” PROGRAM (up to 5%): maintaining
25 ERC’s “Got Lead?” Program which reduces the numbers of contaminated products that reach
26 California consumers by providing access to free testing for lead in dietary supplement
27 products (Products submitted to the program are screened for ingredients which are suspected
28 to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified

1 laboratory for testing, and the results shared with the consumer that submitted the product).

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

7 **4.6** \$30,635.00 shall be distributed to Michael Freund as reimbursement of ERC's
8 attorney fees, while \$81,123.15 shall be distributed to ERC for its in-house legal fees. Except
9 as explicitly provided herein, each Party shall bear its own fees and costs.

10 **4.7** In the event that Health-Ade fails to remit the Total Settlement Amount owed
11 under Section 4 of this Consent Judgment on or before the Due Date, Health-Ade shall be
12 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
13 provide written notice of the delinquency to Health-Ade via electronic mail. If Health-Ade
14 fails to deliver the Total Settlement Amount within five (5) days from the written notice, the
15 Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided
16 in the California Code of Civil Procedure section 685.010. Additionally, Health-Ade agrees to
17 pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due
18 under this Consent Judgment.

19 **5. MODIFICATION OF CONSENT JUDGMENT**

20 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
21 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
22 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
23 modified consent judgment.

24 **5.2** If either Party seeks to modify this Consent Judgment under Section 5.1, then
25 the requesting Party must provide written notice to the other Party of its intent ("Notice of
26 Intent"). If the recipient Party seeks to meet and confer regarding the proposed modification
27 in the Notice of Intent, then it must provide written notice to the requesting Party within thirty
28 (30) days of receiving the Notice of Intent. If the recipient Party timely notifies the requesting

1 Party of its intent to meet and confer, then the Parties shall meet and confer in good faith as
2 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
3 days of the written notification of intent to meet and confer. Within thirty (30) days of such
4 meeting, if the recipient Party disputes the proposed modification, then such Party shall
5 provide to the requesting Party a written basis for its position. The Parties shall continue to
6 meet and confer for an additional thirty (30) days in an effort to resolve any remaining
7 disputes. Should it become necessary, the Parties may agree in writing to different deadlines
8 for the meet-and-confer period.

9 **5.3** In the event that Health-Ade initiates or otherwise requests a modification under
10 Section 5.1, and the meet and confer process leads to a joint motion or joint application for a
11 modification of the Consent Judgment, Health-Ade shall reimburse ERC its costs and
12 reasonable attorney's fees for the reasonable time spent in the meet and confer process and in
13 filing and arguing the motion or application.

14 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
15 **JUDGMENT**

16 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
17 terminate this Consent Judgment.

18 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
19 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
20 inform Health-Ade within sixty (60) days of its test results, including a copy of all ERC test
21 results and the information sufficient to permit Health-Ade to identify the Covered Products at
22 issue (including lot numbers of the Covered Products tested if available on the labeling or
23 packaging for the Covered Product). Health-Ade shall, within thirty (30) days following such
24 notice, provide ERC with testing information, from an independent third-party laboratory
25 meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Health-Ade's compliance
26 with the Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC
27 taking any further legal action.

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1 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
10 on behalf of itself and in the public interest, and Health-Ade and its respective officers,
11 directors, shareholders, employees, agents, affiliates (including but not limited to First
12 Beverage Group, LLC, and First Beverage Group, L.P.), parent companies, subsidiaries,
13 divisions, suppliers, franchisees, licensees, customers (not including private label customers of
14 Health-Ade), distributors, wholesalers, retailers, and all other upstream and downstream
15 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
16 assigns of any of them (collectively, “Released Parties”).

17 **8.2** ERC, acting in the public interest, releases the Released Parties from any
18 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
19 to lead and/or mercury from the Covered Products as set forth in the Notices of Violation.
20 ERC, on behalf of itself only, hereby fully releases and discharges the Released Parties from
21 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
22 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or
23 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its
24 implementing regulations arising from the failure to provide Proposition 65 warnings on the
25 Covered Products regarding lead and/or mercury up to and including the Effective Date.

26 **8.3** ERC on its own behalf only, and Health-Ade on its own behalf only, further
27 waive and release any and all claims they may have against each other for all actions or
28 statements made or undertaken in the course of seeking or opposing enforcement of

1 Proposition 65 in connection with the Notices and Complaint up through and including the
2 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
3 right to seek to enforce the terms of this Consent Judgment.

4 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
5 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
6 discovered. ERC on behalf of itself only, and Health-Ade on behalf of itself only, acknowledge
7 that this Consent Judgment is expressly intended to cover and include all such claims up
8 through and including the Effective Date, including all rights of action therefore. ERC and
9 Health-Ade acknowledge that the claims released in Sections 8.2 and 8.3 above may include
10 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
11 unknown claims. California Civil Code section 1542 reads as follows:

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

16 ERC on behalf of itself only, and Health-Ade on behalf of itself only, acknowledge and
17 understand the significance and consequences of this specific waiver of California Civil Code
18 Section 1542.

19 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
21 exposures to lead and/or mercury in the Covered Products as set forth in the Notices and
22 Complaint.

23 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
24 environmental exposures arising under Proposition 65, nor shall it apply to any of Health-
25 Ade's products other than the Covered Products that are manufactured for sale in California,
26 sold to consumers in California or "Distributed into the State of California."

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

28 In the event that any of the provisions of this Consent Judgment are held by a court to be

1 unenforceable, the validity of the remaining enforceable provisions shall not be adversely
2 affected.

3 **10. GOVERNING LAW**

4 **10.1** The terms and conditions of this Consent Judgment shall be governed by and
5 construed in accordance with the laws of the State of California.

6 **10.2** In the event that Proposition 65, either as a whole or as specifically applicable to
7 the Covered Products or listed chemicals at issue in this case, is repealed or federally preempted,
8 or if new or different safe harbor levels are established as applicable to the Covered Products, or if
9 Proposition 65 is otherwise rendered inapplicable to the Covered Products or listed chemicals at
10 issue in this case, all by any final regulation or statute, or by a decision of the California Supreme
11 Court, or if any of the provisions of this Consent Judgment are specifically rendered inapplicable
12 or no longer required as to the Covered Products as a result of any such regulatory or statutory
13 change, repeal or preemption or decision of the California Supreme Court, or due to federal laws
14 or regulations, then Health Ade may provide written notice to ERC of any asserted change in the
15 law, and it shall have no further obligations pursuant to this Consent Judgment with respect to the
16 Covered Products, to the extent that the Covered Products are so affected and subject to ERC's
17 right to seek enforcement of the Consent Judgment, consistent with all applicable rules and
18 regulations.

19 **11. PROVISION OF NOTICE**

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

23 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
24 Chris Heptinstall, Executive Director, Environmental Research Center
25 3111 Camino Del Rio North, Suite 400
26 San Diego, CA 92108
27 Ph: (619) 500-3090
28 Email: chris.heptinstall@erc501c3.org

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1 With a copy to:
2 Michael Freund
3 Michael Freund & Associates 1919
4 Addison Street, Suite 105
5 Berkeley, CA 94704 Telephone:
6 (510) 499-1992 Email:
7 freund1@aol.com

8 **FOR HEALTH-ADE LLC**

9 Patricia Christine ("Chris") Lansing
10 CEO
11 Health-Ade LLC
12 Email: clansing@health-ade.com
13 Telephone: (844) 337-6368

14 With a copy to:
15 Hazel Ocampo
16 Greenberg Traurig LLP
17 18565 Jamboree Road, Suite 500
18 Irvine, CA 92612
19 Telephone: (949) 732-6545 Email:
20 ocampoh@gtlaw.com

21 **12. COURT APPROVAL**

22 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
23 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
24 Consent Judgment.

25 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
27 prior to the hearing on the motion.

28 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
void and have no force or effect.

13. EXECUTION AND COUNTERPARTS

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

1 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

18 Both parties may, by motion or order to show cause before the Superior Court of
19 Alameda County, enforce the terms and conditions contained in this Consent Judgment. The
20 parties may seek whatever fines, costs, penalties, or remedies as are provided by law for the
21 other party's failure to comply with the Consent Judgment.

22 **17. ENTIRE AGREEMENT, AUTHORIZATION**

23 **17.1** This Consent Judgment contains the sole and entire agreement and
24 understanding of the Parties with respect to the entire subject matter herein, including any and
25 all prior discussions, negotiations, commitments, and understandings related thereto. No
26 representations, oral or otherwise, express or implied, other than those contained herein have
27 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
28 herein, shall be deemed to exist or to bind any Party.

1 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
3 specifically provided in this Consent Judgment, each Party shall bear its own attorneys' fees
4 and costs in connection with the claims resolved in this Consent Judgment.

5 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
6 **CONSENT JUDGMENT**

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

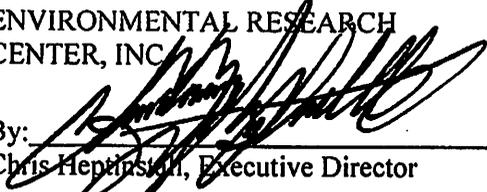
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
12 been diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

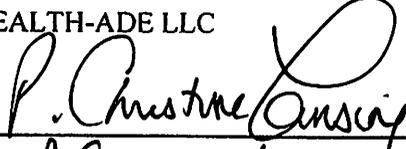
15 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
16 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

17 **IT IS SO STIPULATED:**

18
19 Dated: 11/13/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC
By: 
Chris Heptinstall, Executive Director

20
21
22
23
24 Dated: 11/15, 2023

HEALTH-ADE LLC

By: P. CHRISTINE LANSING
Its: CEO, Health-Ade LLC

1 **APPROVED AS TO FORM:**

2
3 Dated: November 13, 2023

MICHAEL FREUND & ASSOCIATES

4
5 By: 
6 Michael Freund
7 Attorney for Plaintiff Environmental
8 Research Center, Inc.

9 Dated: November 15, 2023

GREENBERG TRAURIG LLP

10 By: 
11 Hazel Ocampo
12 Attorney for Defendants Health-Ade LLC,
13 First Beverage Group, LLC, and First
14 Beverage Group, L.P.

15
16 **ORDER AND JUDGMENT**

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

19 IT IS SO ORDERED, ADJUDGED AND DECREED.

20
21 Dated: _____, 2023

22 Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

February 10, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

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

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

- 1. Health-Ade Pop Apple Snap – Lead, Mercury**
- 2. Health-Ade Pop Strawberry Vanilla – Lead, Mercury**
- 3. Health-Ade Pop Pomegranate Berry – Lead, Mercury**
- 4. Health-Ade Pop Juicy Grape – Lead, Mercury**
- 5. Health-Ade Pop Ginger Fizz – Lead, Mercury**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 10, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

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

CERTIFICATE OF MERIT

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

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: February 10, 2023



Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On February 10, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Health-Ade LLC
2012 Abalone Ave
Torrance, CA 90501

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

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

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

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

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

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

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

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

On February 10, 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

On February 10, 2023 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

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

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

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

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

Morgan Briggs Gire, District Attorney
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Roseville, CA 95678
Prop65@placer.ca.gov

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

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

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

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

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

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

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

February 10, 2023

Page 6

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

Mark Ankorn, 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
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

Bud Porter, Supervising Deputy District Attorney
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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

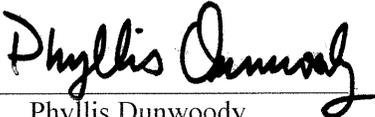
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 February 10, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on February 10, 2023, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

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

District Attorney, El Dorado
County
778 Pacific St
Placerville, CA 95667

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

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

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

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

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

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

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

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

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

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

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

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

District Attorney, San
Bernardino County
303 West Third Street
San Bernadino, CA 92415

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
Post Office Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

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

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT B

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

February 23, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

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

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

- 1. Health-Ade Pop Lemon Lime – Lead, Mercury**
- 2. Health-Ade Kombucha Watermelon – Lead**
- 3. Health-Ade Kombucha Cherry • Berry - Mercury**
- 4. Health-Ade Kombucha Berry Lemonade – Lead, Mercury**
- 5. Health-Ade Mixers Moscow Mule Mix A Kombucha Cocktail Mixer Ginger Lime Lemongrass- Lead**
- 6. Health-Ade Mixers Whiskey Sour Mix A Kombucha Cocktail Mixer Citrus Cherry Bitters – Lead, Mercury**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 23, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

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

CERTIFICATE OF MERIT

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

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: February 23, 2023



Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On February 23, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Health-Ade LLC
2012 Abalone Ave
Torrance, CA 90501

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

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

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

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

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

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

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

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

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

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

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

February 23, 2023

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

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

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

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

Allison Haley, District Attorney
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Napa, CA 94559
CEPD@countyofnapa.org

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900 Ward Street
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sgrassini@contracostada.org

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

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

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

Thomas L. Hardy, District Attorney
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168 North Edwards Street
Independence, CA 93526
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Morgan Briggs Gire, District Attorney
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Roseville, CA 95678
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Michelle Latimer, Program Coordinator
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Susanville, CA 96130
mlatimer@co.lassen.ca.us

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

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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

February 23, 2023

Page 6

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

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

Alexandra Grayner, Assistant District Attorney
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San Francisco, CA 94103
Alexandra.grayner@sfgov.org

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

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edobroth@co.slo.ca.us

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1112 Santa Barbara Street
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DAProp65@co.santa-barbara.ca.us

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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

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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

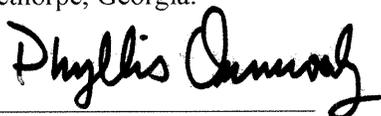
Phillip J. Cline, District Attorney
Tulare County
231 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

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

District Attorney, El Dorado
County
778 Pacific St
Placerville, CA 95667

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

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San
Bernardino County
303 West Third Street
San Bernadino, CA 92415

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
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Redding, CA 96001

District Attorney, Sierra
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Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

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

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT C

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

March 16, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

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

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

- 1. Health-Ade Kombucha Ginger Pineapple Belly Reset – Lead, Mercury**
- 2. Health-Ade Kombucha Strawberry Glow – Lead, Mercury**
- 3. Health-Ade Kombucha Citrus Immune Boost - 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.

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 16, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

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

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

CERTIFICATE OF MERIT

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

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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



Dated: March 16, 2023

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On March 16, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Health-Ade LLC
2012 Abalone Ave
Torrance, CA 90501

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

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

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

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

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

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

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

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

On March 16, 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

March 16, 2023

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On March 16, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney
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Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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Santa Ana, CA 92703
Prop65notice@da.ocgov.com

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168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

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Roseville, CA 95678
Prop65@placer.ca.gov

Michelle Latimer, Program Coordinator
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mlatimer@co.lassen.ca.us

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

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Mariposa, CA 95338
mcda@mariposacounty.org

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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

March 16, 2023

Page 6

Summer Stephan, District Attorney
San Diego County
330 West Broadway
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SanDiegoDAProp65@sdcda.org

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

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

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

Tori Verber Salazar, District Attorney
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edobroth@co.slo.ca.us

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

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

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

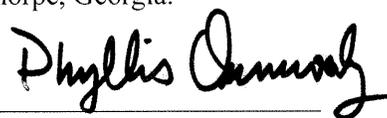
Phillip J. Cline, District Attorney
Tulare County
231 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
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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 March 16, 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 March 16, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

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

District Attorney, El Dorado
County
778 Pacific St
Placerville, CA 95667

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

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San
Bernardino County
303 West Third Street
San Bernadino, CA 92415

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
Post Office Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

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

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

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

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.