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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **COUNTY OF ALAMEDA**

26 **ENVIRONMENTAL RESEARCH**
27 **CENTER, INC., a California non-profit**
28 **corporation**

Plaintiff,

vs.

KEVITA, INC. and DOES 1-100
Defendants.

CASE NO. 23CV054344

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 29, 2023
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On November 29, 2023, Plaintiff Environmental Research Center, Inc.
3 (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this
4 action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the
5 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5
6 *et seq.* (“Proposition 65”), against Kevita, Inc. (“Kevita”) and Does 1-100. In this action, ERC
7 alleges that a number of products manufactured, distributed, or sold by Kevita contain lead
8 and/or mercury, chemicals listed under Proposition 65 as carcinogens and/or reproductive
9 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.
10 These products (referred to hereinafter individually as a “Covered Product” or collectively as
11 “Covered Products”) are: (1) Kevita Bold + Smooth Kombucha Master Brew Tart Cherry
12 (mercury), (2) Kevita Probiotic Refresher Sparkling Drink Lemon Ginger (lead, mercury), (3)
13 Kevita Apple Cider Vinegar Tonic Turmeric Ginger (mercury), (4) Kevita Probiotic Refresher
14 Sparkling Drink Lemon Cayenne (lead, mercury), (5) Kevita Bold + Smooth Kombucha
15 Master Brew Mango Lime (lead, mercury), (6) Kevita Master Brew Kombucha Blueberry
16 Basil (lead, mercury), and (7) Kevita Probiotic Refresher Sparkling Drink Mojita Lime Mint
17 Coconut (lead).

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

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

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

1 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
2 dated March 9, 2023 and March 16, 2023 that were served on the California Attorney General,
3 other public enforcers, and Kevita (“Notices”). True and correct copies of the 60-Day Notices
4 dated March 9, 2023 and March 16, 2023 are attached hereto as **Exhibits A and B** and each is
5 incorporated herein by reference. More than 60 days have passed since the Notices were served
6 on the Attorney General, public enforcers, and Kevita and no designated governmental entity
7 has filed a Complaint against Kevita with regard to the Covered Products or the alleged
8 violations.

9 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
10 California consumers exposes them to lead and/or mercury without first receiving clear and
11 reasonable warnings from Kevita, which would be in violation of California Health and Safety
12 Code section 25249.6. Kevita denies all material allegations contained in the Notices and
13 Complaint, including that the Covered Products expose consumers to lead and/or mercury, that
14 any warnings are required, that any consumer has suffered any harm, monetary or otherwise, as
15 a result of any of the allegations in the Notices and Complaint, and that any party is entitled to
16 any monetary recovery or other relief.

17 **1.7** The Parties have entered into this Consent Judgment in order to settle,
18 compromise, and resolve disputed claims. The Parties agree that they are entering into this
19 Consent Judgment solely for the purposes of avoiding the costs of potential litigation of the
20 Notices and Complaint. This Consent Judgment is the product of informed negotiations and
21 compromises of previously stated legal positions. Nothing in this Consent Judgment nor
22 compliance with this Consent Judgment shall constitute or be construed as an admission of any
23 kind by any of the Parties or by any of their respective officers, directors, shareholders,
24 employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers,
25 suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or violation of law.

26 **1.8** Nothing contained in this Consent Judgment shall be construed as an admission
27 by any Party as to the merit or lack of merit of any particular claim or defense. Except as
28 expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair

1 any right, remedy, argument, or defense the Parties may have in any current or future legal
2 proceeding unrelated to these proceedings.

3 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
4 as a Judgment by this Court.

5 **2. JURISDICTION AND VENUE**

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

13 **3. INJUNCTIVE RELIEF, TESTING AND WARNINGS**

14 **3.1** Beginning on the Effective Date, Kevita shall be enjoined from manufacturing
15 for sale in the State of California, “Distributing into the State of California,” or directly selling
16 in the State of California, any Covered Product that exposes a person to a “Daily Lead
17 Exposure Level” of more than 0.5 micrograms of lead per day and/or a “Daily Mercury
18 Exposure Level” of more than 0.3 micrograms of mercury per day unless the Covered Product
19 meets the warning requirements under Section 3.2. Except as expressly agreed to herein,
20 nothing in this Section 3 shall bind Kevita to any obligations greater than or in addition to
21 those imposed by Proposition 65.

22 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
23 of California” shall mean to directly ship a Covered Product into California for sale in
24 California or to sell a Covered Product to a distributor that Kevita knows or has reason to know
25 will sell the Covered Product in California.

26 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
27 Level” shall be measured in micrograms, and shall be calculated using the following formula:
28 micrograms of lead per gram of product, multiplied by grams of product per serving of the

1 product (using the largest serving size appearing on the product label), multiplied by servings
2 of the product per day (using the largest number of recommended daily servings appearing on
3 the label), which equals micrograms of lead exposure per day. If the label contains no
4 recommended daily servings, then the number of recommended daily servings shall be one.
5 The “Daily Lead Exposure Level” for the Covered Products shall be exclusively determined
6 pursuant to the testing and quality control methodology set forth in Section 3.4.

7 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
8 Level” shall be measured in micrograms, and shall be calculated using the following formula:
9 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
10 product (using the largest serving size appearing on the product label), multiplied by servings
11 of the product per day (using the largest number of recommended daily servings appearing on
12 the label), which equals micrograms of mercury exposure per day. If the label contains no
13 recommended daily servings, then the number of recommended daily servings shall be one.
14 The “Daily Mercury Exposure Level” for the Covered Products shall be exclusively
15 determined pursuant to the testing and quality control methodology set forth in Section 3.4.

16 **3.2 Clear and Reasonable Warnings**


17 If Kevita is required to provide a warning pursuant to Section 3.1, one of the following
18 warnings must be utilized (“Warning”):

19 **OPTION 1:**

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

23 *Or*

24 **OPTION 2:**

25  **WARNING:** [Cancer and] Reproductive harm – www.P65Warnings.ca.gov

26 Kevita shall use the phrase “cancer and” in the Warning if Kevita has reason to believe
27 that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined
28 pursuant to the quality control methodology set forth in Section 3.4 or if Kevita has reason to

1 believe that another Proposition 65 chemical is present which may require a cancer warning. For
2 the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral
3 triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no
4 smaller than the height of the word “**WARNING.**” Where the sign, label or shelf tag for the
5 product is not printed using the color yellow, the symbol may be printed in black and white. As
6 identified in the brackets, the warning shall appropriately reflect whether there is lead or mercury,
7 or multiple chemicals at Kevita’s option, present in each of the Covered Products, but if there is a
8 chemical present at a level that requires a cancer warning, the chemical requiring use of the phrase
9 “cancer and” in the Warning shall always be identified.

10 The Warning shall either (1) be securely affixed to or printed upon the label of each
11 Covered Product and it must be set off from other surrounding information and enclosed in a
12 box, or (2) be placed on a posted sign, shelf tag, or shelf sign, for the Covered Product at each
13 point of display of the Covered Product. In addition, for any Covered Product sold over the
14 internet, the Warning shall appear on the checkout page or included in the Covered Product’s
15 information on the website where the Covered Product is sold when a California delivery
16 address is indicated for any purchase of any Covered Product. An asterisk or other identifying
17 method must be utilized to identify which products on the checkout page are subject to the
18 Warning. The Warning may be provided with a conspicuous hyperlink stating “**WARNING**”
19 in all capital and bold letters so long as the hyperlink goes directly to a page prominently
20 displaying the Warning without content that detracts from the Warning.

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

27 Kevita must display the above Warning with such conspicuousness, as compared with
28 other words, statements or designs on the label, or on its website, if applicable, to render the

1 Warning likely to be read and understood by an ordinary individual under customary conditions
2 of purchase or use of the product. Where a sign or label used to provide the Warning for a
3 Covered Product includes consumer information about the Covered Product in a language other
4 than English, the Warning must also be provided in that language in addition to English.

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

8 **3.3 Conforming Covered Products**

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

15 **3.4 Testing and Quality Control Methodology**

16 **3.4.1** Beginning within one year of the Effective Date, Kevita shall arrange for
17 lead and mercury testing of the Covered Products at least once a year for a minimum of three
18 consecutive years by arranging for testing of three (3) randomly selected samples of each of
19 the Covered Products, in the form intended for sale to the end-user, which Kevita intends to
20 sell or is manufacturing for sale in California, directly selling to a consumer in California or
21 “Distributing into the State of California” (the Original Testing). If tests conducted pursuant to
22 this Section demonstrate that the Daily Lead Exposure Level and/or the Daily Mercury
23 Exposure Level do not exceed the thresholds specified in Section 3.1, then no Warning shall be
24 required for a Covered Product. If the Original Testing demonstrates that no Warning is
25 required for a Covered Product during each of three consecutive years, then the testing
26 requirements of this Section will no longer be required as to that Covered Product. Kevita shall
27 not be obligated to test any Covered Products that are or have been discontinued unless Kevita
28 resumes sales of the discontinued Covered Product.

1 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
2 “Daily Mercury Exposure Level,” the highest lead or mercury detection result of three (3)
3 randomly selected samples of the Covered Products will be controlling. If, during a required
4 testing year, the highest result for a Covered Product pursuant to the Original Testing as
5 described in Section 3.4.1 reflects an exposure in excess of the thresholds specified in Section
6 3.1, as applicable, Kevita shall have the right to retest three (3) randomly selected samples from
7 different lots (“Retest”), and the highest lead or mercury detection result from the three samples
8 tested during the Retest shall be used as controlling for calculating the Daily Lead Exposure
9 Level and/or the Daily Mercury Exposure Level, as applicable, for that Covered Product for
10 purposes of the Consent Judgment. If Kevita chooses to conduct a Retest, then it shall notify
11 ERC in writing that it has done so and shall provide the tests from the Original Testing and the
12 Retest to ERC as required pursuant to Section 3.4.7 or Section 6.2. Additionally, if Kevita
13 chooses to conduct a Retest, it shall comply with Sections 3.1 and 3.2 with respect to any lot
14 from which the Original Testing sample that exceeded the threshold specified in Section 3.1 was
15 obtained. This means that if any sample tested in the Original Testing had a Daily Lead
16 Exposure Level greater than 0.5 micrograms of lead per day and/or a Daily Mercury Exposure
17 Level greater than 0.3 micrograms of mercury per day, as determined by the exposure
18 methodology set forth in Section 3.1.2, then Kevita must comply with Sections 3.1 and 3.2
19 before selling or distributing Covered Products from that sample’s lot to California consumers.
20 Kevita shall not be permitted to conduct a Retest on a Covered Product for any year in which
21 multiple samples from the Original Testing reflect an exposure in excess of the thresholds
22 specified in Section 3.1. Kevita shall be permitted one Retest per Covered Product for each of
23 lead and mercury, as outlined in this Section, during each year that it performs testing. If any
24 sample in the Retest reflects an exposure in excess of the thresholds specified in Section 3.1,
25 Kevita shall comply with Sections 3.1 and 3.2 as to that Covered Product. The results of any
26 Retest shall not be considered in determining whether Kevita’s testing obligations have ceased as
27 set forth in Section 3.4.1

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

1 laboratory method that complies with the performance and quality control factors appropriate
2 for the method used, including limit of detection and limit of quantification, sensitivity,
3 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
4 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
5 mg/kg.

6 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
7 independent third party laboratory certified by the California Environmental Laboratory
8 Accreditation Program or an independent third-party laboratory that is registered with the
9 United States Food & Drug Administration. Each Party may select a qualifying laboratory of
10 its choice to conduct testing pursuant to Section 3.4.1.

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

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

17 **4. SETTLEMENT PAYMENT**

18 **4.1** In full satisfaction of all potential civil penalties, additional settlement
19 payments, attorney’s fees, and costs, Kevita shall make a total payment of \$150,000.00 (“Total
20 Settlement Amount”) to ERC within ten (10) business days of the Effective Date (“Due Date”).
21 Kevita shall make this payment by wire transfer to ERC’s account, for which ERC will provide
22 to Kevita the necessary account information prior to the Effective Date. Kevita shall have no
23 obligation or duty whatsoever with respect to the allocation of the Total Settlement Amount.
24 The Total Settlement Amount shall be apportioned as follows:

25 **4.2** \$35,000.00 shall be considered a civil penalty pursuant to California Health and
26 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$26,250.00) of the civil penalty to
27 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
28 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety

1 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,750.00) of the civil penalty.

2 **4.3** \$10,915.12 shall be distributed to ERC as reimbursement to ERC for reasonable
3 costs incurred in bringing this action.

4 **4.4** \$25,973.48 shall be distributed to ERC as an Additional Settlement Payment
5 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
6 and 3204. ERC will utilize the ASP for activities that address the same public harm as
7 allegedly caused by Defendant in this matter. These activities are detailed below and support
8 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
9 dietary supplement products in California. ERC’s activities have had, and will continue to
10 have, a direct and primary effect within the State of California because California consumers
11 will be benefitted by the reduction and/or elimination of exposure to lead and/or mercury in
12 dietary supplements and/or by providing clear and reasonable warnings to California
13 consumers prior to ingestion of the products.

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

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

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

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

11 **4.5** \$32,941.40 shall be distributed to Aqua Terra Aeris Law Group as
12 reimbursement of ERC's attorney fees, while \$45,170.00 shall be distributed to ERC for its in-
13 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
14 costs.

15 **4.6** In the event that Kevita fails to remit the Total Settlement Amount owed under
16 Section 4 of this Consent Judgment on or before the Due Date without a written agreement
17 from ERC for an extension, Kevita shall be deemed to be in material breach of its obligations
18 under this Consent Judgment. ERC shall provide written notice of the delinquency to Kevita
19 via electronic mail. If Kevita fails to deliver the Total Settlement Amount within five (5) days
20 from the written notice, the Total Settlement Amount shall accrue interest at the statutory
21 judgment interest rate provided in the California Code of Civil Procedure section 685.010.
22 Additionally, Kevita agrees to pay ERC's reasonable attorney's fees and costs for any efforts
23 to collect the payment due under this Consent Judgment.

24 **5. MODIFICATION OF CONSENT JUDGMENT**

25 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
26 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
27 or (ii) after a written agreement by the Parties to modify the Consent Judgment, by motion of
28 either Party or a joint motion or joint application for a modification of the Consent Judgment

1 and upon entry by the Court of a modified consent judgment as agreed upon by the Parties.

2 **5.2** If Kevita seeks to modify this Consent Judgment under Section 5.1, then Kevita
3 must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to meet and
4 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
5 written notice to Kevita within thirty (30) days of receiving the Notice of Intent. If ERC
6 notifies Kevita in a timely manner of ERC’s intent to meet and confer, then the Parties shall
7 meet and confer in good faith as required in this Section. The Parties shall meet in person, via
8 remote meeting, or via telephone within thirty (30) days of ERC’s notification of its intent to
9 meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
10 modification, ERC shall provide to Kevita a written basis for its position. The Parties shall
11 continue to meet and confer for an additional thirty (30) days in an effort to resolve any
12 remaining disputes. Should it become necessary, the Parties may agree in writing to different
13 deadlines for the meet-and-confer period.

14 **5.3** If ERC seeks to modify this Consent Judgment under Section 5.1, then ERC
15 must provide written notice to Kevita of its intent (“Notice of Intent”). If Kevita seeks to meet
16 and confer regarding the proposed modification in the Notice of Intent, then Kevita must
17 provide written notice to ERC within thirty (30) days of receiving the Notice of Intent. If
18 Kevita notifies ERC in a timely manner of Kevita’s intent to meet and confer, then the Parties
19 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
20 or via telephone within thirty (30) days of Kevita’s notification of its intent to meet and confer.
21 Within thirty (30) days of such meeting, if Kevita disputes the proposed modification, Kevita
22 shall provide to ERC a written basis for its position. The Parties shall continue to meet and
23 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
24 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
25 confer period.

26 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
27 **JUDGMENT**

28 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or

1 terminate this Consent Judgment.

2 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
3 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
4 inform Kevita in a reasonably prompt manner of its test results, including information
5 sufficient to permit Kevita to identify the Covered Products at issue and the manufacturing lots
6 of the Covered Products tested by ERC. The date of the written notice shall be no later than
7 sixty (60) days after the test result date for the Covered Product. Kevita shall, within sixty (60)
8 days following such notice, provide ERC with testing information, from an independent third-
9 party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Kevita's
10 compliance with the Consent Judgment. Kevita's compliance may be demonstrated by Kevita
11 by producing test results required by Section 3.4.1 and that meet the requirements of Sections
12 3.4.2, 3.4.3, and 3.4.4 reflecting that the Covered Products qualify as Conforming Covered
13 Products. If Kevita's testing does not demonstrate compliance with the Consent Judgment
14 satisfactory to ERC, the Parties shall first attempt to resolve the matter prior to ERC taking any
15 further legal action.

16 **6.3** In the event that Proposition 65, either as a whole or as specifically applicable to
17 the Covered Products or listed chemicals, is repealed or preempted by the California
18 legislature, the California Supreme Court or the United States Supreme Court, then Kevita may
19 provide written notice to ERC of any asserted change in the law, and it shall have no further
20 obligations pursuant to this Consent Judgment. If Proposition 65 is otherwise altered or
21 amended by the California legislature, the California Supreme Court or the United States
22 Supreme Court in a manner that Kevita believes affects its obligation to provide Proposition 65
23 warnings with respect to the Covered Products under the Consent Judgment, Kevita may move
24 for modification of the Consent Judgment to the extent that the Covered Products are so
25 affected, so long as Kevita first engages in a meet and confer process as is outlined in Section
26 5.2, or the Parties may stipulate to the entry of a modified Consent Judgment.

27 **7. APPLICATION OF CONSENT JUDGMENT**

28 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their

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

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

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

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

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

1 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
2 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
3 discovered. ERC on behalf of itself only, and Kevita on behalf of itself only, acknowledge that
4 this Consent Judgment is expressly intended to cover and include all such claims up through
5 and including the Effective Date, including all rights of action therefore. ERC and Kevita
6 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown
7 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
8 claims. California Civil Code section 1542 reads as follows:

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

15 ERC on behalf of itself only, and Kevita on behalf of itself only, acknowledge and understand
16 the significance and consequences of this specific waiver of California Civil Code section
17 1542.

18 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
19 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
20 exposures to lead and/or mercury in the Covered Products as set forth in the Notices and
21 Complaint.

22 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
23 environmental exposures arising under Proposition 65, nor shall it apply to any of Kevita's
24 products other than the Covered Products.

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

29 **10. GOVERNING LAW**

30 The terms and conditions of this Consent Judgment shall be governed by and construed in

1 accordance with the laws of the State of California.

2 **11. PROVISION OF NOTICE**

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

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

7 Chris Heptinstall, Executive Director, Environmental Research Center
8 3111 Camino Del Rio North, Suite 400
9 San Diego, CA 92108
Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

10 With a copy to:

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

16 **FOR KEVITA, INC.:**

17 Charles Broll
18 Tropicana Products, Inc.
433 W Van Buren St., Ste 3N
Chicago, IL 60607
19 Email: Charles.Broll@tropicana.com

20
21 With a copy to:

22 Arianna Scavetti
23 Weil, Gotshal & Manges LLP
2001 M Street NW, Ste 600
Washington, DC 20036
24 Telephone: (202) 682-7000
25 Email: arianna.scavetti@weil.com

26 **12. COURT APPROVAL**

27 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
28 Motion for Court Approval. The Parties shall use their best efforts to support entry of this

1 Consent Judgment.

2 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
3 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
4 prior to the hearing on the motion.

5 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
6 void and have no force or effect.

7 **13. EXECUTION AND COUNTERPARTS**

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

11 **14. DRAFTING**

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

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

21 If a dispute arises with respect to either Party's compliance with the terms of this Consent
22 Judgment entered by the Court, the Parties shall meet and confer in person, via remote meeting,
23 by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No
24 action or motion may be filed in the absence of such a good faith attempt to resolve the dispute
25 beforehand.

26 **16. ENFORCEMENT**

27 ERC may, by motion or order to show cause before the Superior Court of Alameda
28 County, enforce the terms and conditions contained in this Consent Judgment. In any action

1 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
2 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
3 To the extent the failure to comply with the Consent Judgment constitutes a violation of
4 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
5 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
6 provided by law for failure to comply with Proposition 65 or other laws.

7 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

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

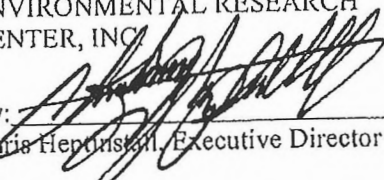
28 ///

1 IT IS SO STIPULATED:

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Dated: 5/21, 2024

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepburn, Executive Director

Dated: 5/22, 2024


KEVITA, INC.


By: Charles Broil, Chief Legal Officer

APPROVED AS TO FORM:


Dated: 5/24, 2024

AQUA TERRA AERIS LAW GROUP

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

Dated: 5/23, 2024

WEIL, GOTSHAL & MANGES LLP

By: 
Bambo Obaro
David Singh
Arianna Scavetti
Attorneys for Defendant Kevita, Inc.

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2024

Judge of the Superior Court

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EXHIBIT A



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

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

March 9, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Kevita, Inc.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 9, 2023
Page 2

- 1. Kevita Bold + Smooth Kombucha Master Brew Tart Cherry - Mercury**
- 2. Kevita Probiotic Refresher Sparkling Drink Lemon Ginger – Lead, Mercury**
- 3. Kevita Apple Cider Vinegar Tonic Turmeric Ginger- 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 March 9, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 9, 2023
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ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

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

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Kevita, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 9, 2023
Page 4

CERTIFICATE OF MERIT

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

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: March 9, 2023

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

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 9, 2023
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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 9, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Kevita, Inc.
433 W. Van Buren, Suite 3N
Chicago, IL 60607

CT Corporation System
(Registered Agent for Kevita, Inc.)
330 N Brand Blvd
Glendale, CA 91203

CT Corporation System
(Registered Agent for Kevita, Inc.)
28 Liberty St
New York, NY 10005

On March 9, 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 March 9, 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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

March 9, 2023

Page 7

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
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

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

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

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

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

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

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

On March 9, 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 9, 2023, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



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

March 9, 2023

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Service List

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B



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

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

March 16, 2023

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Kevita, Inc.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
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1. **Kevita Probiotic Refresher Sparkling Drink Lemon Cayenne – Lead, Mercury**
2. **Kevita Bold + Smooth Kombucha Master Brew Mango Lime – Lead, Mercury**
3. **Kevita Master Brew Kombucha Blueberry Basil - Lead, Mercury**
4. **Kevita Probiotic Refresher Sparkling Drink Mojita Lime Mint Coconut – 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 Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

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

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Kevita, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Kevita, Inc.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

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

Dated: March 16, 2023

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Kevita, Inc.
433 W. Van Buren, Suite 3N
Chicago, IL 60607

CT Corporation System
(Registered Agent for Kevita, Inc.)
330 N Brand Blvd
Glendale, CA 91203

CT Corporation System
(Registered Agent for Kevita, Inc.)
28 Liberty St
New York, NY 10005

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

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
March 16, 2023
Page 6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

March 16, 2023

Page 7

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
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

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

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

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

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

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

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

On 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



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

March 16, 2023

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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 Bernardino, 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.