

Matthew C. Maclear (SBN 209228)
Anthony M. Barnes (SBN 199048)
Aqua Terra Aeris Law Group
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
Email: mcm@atalawgroup.com
amb@atalawgroup.com
Attorneys for Plaintiff Environmental Research Center, Inc.

Matthew Orr (SBN 211097)
Amin Wasserman Gurnani, LLP
515 S Flower Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 933-2330
Email: morr@amintalati.com

Attorney for Defendants Chameleon Cold Brew, LLC, Groundforce
Capital Management, LLC, individually and dba PowerPlant Partners,
and SYSTM Brands LLC, individually and dba SYSTM Foods

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,
vs.

**CHAMELEON COLD BREW, LLC;
GROUNDFORCE CAPITAL
MANAGEMENT, LLC, individually and
dba POWERPLANT PARTNERS; SYSTM
BRANDS LLC, individually and dba
SYSTM FOODS, INC.; and DOES 1-100**

Defendants.

CASE NO. 24CV063580

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 13, 2024
Trial Date: None set

1. INTRODUCTION

1.1 On February 13, 2024, Plaintiff Environmental Research Center, Inc. (“ERC”),

1 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
2 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
3 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
4 against Chameleon Cold Brew, LLC (“Chameleon Cold Brew”), Groundforce Capital
5 Management, LLC, individually and dba PowerPlant Partners, and SYSTM Brands LLC,
6 individually and dba SYSTM Foods, Inc. (collectively, “Defendants”) and Does 1-100.
7 Subsequently, on December 26, 2024, a First Amended Complaint was filed (the operative
8 Complaint, hereinafter referred to as “Complaint”). In this action, ERC alleges that a number
9 of products manufactured, distributed, or sold by Defendants contain lead and/or mercury,
10 chemicals listed under Proposition 65 as carcinogens and/or reproductive toxins, and expose
11 consumers to these chemicals at a level requiring a Proposition 65 warning. These products
12 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
13 Products”) are: (1) Chameleon Organic Cold-Brew Concentrate Mocha Coffee (lead), (2)
14 Chameleon Certified Organic Cold-Brew Concentrate Vanilla Coffee (lead), (3) Chameleon
15 Certified Organic Cold-Brew Unsweetened Espresso Coffee (lead), (4) Chameleon Organic
16 Cold-Brew Concentrate Unsweetened Black Coffee (mercury), (5) Chameleon Organic Cold-
17 Brew Concentrate Caramel Coffee (lead), (6) Chameleon Organic Cold-Brew Concentrate
18 New Orleans Style Coffee (lead), (7) Chameleon Certified Organic Cold-Brew Concentrate
19 Black Coffee (lead), (8) Chameleon Certified Organic Cold-Brew Lightly Sweetened Mexican
20 Coffee (lead, mercury), (9) Chameleon Certified Organic Cold-Brew Concentrate Dark
21 Chocolate Mocha Coffee (lead), (10) Chameleon Organic Handcrafted Cold-Brew Super
22 Concentrate Espresso Coffee (lead), (11) Chameleon Organic Handcrafted Cold-Brew Super
23 Concentrate Vanilla Coffee (lead, mercury), and (12) Chameleon Organic Handcrafted Cold -
24 Brew Super Concentrate Black Coffee (lead).

25 All of the Covered Products, except for the product Chameleon Organic Cold-Brew
26 Concentrate Unsweetened Black Coffee, may also be referred to as “Lead Covered Product(s).”
27 Additionally, the following Covered Products may also be referred to as “Mercury Covered
28 Product(s)”: Chameleon Organic Cold-Brew Concentrate Unsweetened Black Coffee,

Chameleon Certified Organic Cold-Brew Lightly Sweetened Mexican Coffee, and Chameleon Organic Handcrafted Cold-Brew Super Concentrate Vanilla Coffee.

1.2 ERC and Chameleon Cold Brew may also hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

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

1.4 For purposes of this Consent Judgment, ERC contends and Chameleon Cold Brew will not dispute, that Chameleon Cold Brew is a business entity that has employed ten or more persons at all times relevant to this action and qualifies as a “person in the course of doing business” within the meaning of Proposition 65.

1.5 The Complaint is based on allegations contained in ERC’s Notices of Violation dated September 7, 2023, September 14, 2023, November 9, 2023, and September 6, 2024, that were served on the California Attorney General, other public enforcers, and Defendants (“Notices”). True and correct copies of the 60-Day Notices dated September 7, 2023, September 14, 2023, November 9, 2023, and September 6, 2024 are attached hereto as **Exhibits A, B, C, and D** and each is incorporated herein by reference. More than 60 days have passed since the Notices were served on the Attorney General, public enforcers, and Defendants and no designated governmental entity has filed a Complaint against Defendants with regard to the Covered Products or the alleged violations.

1.6 ERC’s Notices and Complaint allege that use of the Covered Products by California consumers exposes them to lead and/or mercury without first receiving clear and reasonable warnings from Defendants, which is in violation of California Health and Safety Code section 25249.6. Defendants deny all material allegations contained in the Notices and Complaint.

1.7 The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
2 or be construed as an admission by any of the Parties or by any of their respective officers,
3 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
4 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
5 issue of law, or violation of law.

6 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
7 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
8 any current or future legal proceeding unrelated to these proceedings.

9 **1.9** The Effective Date of this Consent Judgment is ten (10) days after the date on
10 which it is entered as a Judgment by this Court.

11 **2. JURISDICTION AND VENUE**

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

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

20 **3.1** Beginning on the Effective Date, Chameleon Cold Brew shall be permanently
21 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
22 California,” or directly selling in the State of California, any Lead Covered Product that
23 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per
24 day and/or any Mercury Covered Product that exposes a person to a “Daily Mercury Exposure
25 Level” of more than 0.3 micrograms of mercury per day unless the Lead Covered Product
26 and/or Mercury Covered Product meets the warning requirements under Section 3.2.

27 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
28 of California” shall mean to directly ship a Covered Product into California for sale in

California or to sell a Covered Product to a distributor that Chameleon Cold Brew knows or has reason to know will sell the Covered Product in California.

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

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

3.2 Clear and Reasonable Warnings


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

OPTION 1:

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

OR

OPTION 2:

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

OR

///

1 **OPTION 3:**

2 **WARNING:** Can expose you to [lead][mercury] a [carcinogen and] reproductive
3 toxicant. See www.P65Warnings.ca.gov/food.

4 For all Warning options, the Warning shall begin either with the word “**WARNING,**” as
5 indicated above, or the words “**CA WARNING**” or “**CALIFORNIA WARNING,**” in all capital
6 letters and bold print. Chameleon Cold Brew shall use the phrase “cancer and” in the Option 1
7 and Option 2 Warnings or “carcinogen and” in the Option 3 Warning (each referred to
8 individually as a “Cancer Phrase”) if Chameleon Cold Brew has reason to believe that the “Daily
9 Lead Exposure Level” (for Lead Covered Products) is greater than 15 micrograms of lead as
10 determined pursuant to the quality control methodology set forth in Section 3.4 or, with respect to
11 all Covered Products, if Chameleon Cold Brew has reason to believe that another Proposition 65
12 chemical is present at a level requiring a cancer warning. As identified in the brackets, the
13 warning shall appropriately reflect whether there is lead (only for the Lead Covered Products),
14 mercury (only for the Mercury Covered Products), or multiple chemicals present in each of the
15 Covered Products, but if there is a chemical present at a level that requires a cancer warning, the
16 chemical requiring use of the Cancer Phrase in the Warning shall always be identified.

17 The Option 2 Warning may only be used until January 1, 2028. Any product that is
18 manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of
19 when the product is sold to a consumer. For the Option 2 Warning, a symbol consisting of a black
20 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the
21 left of the text of the Warning, in a size no smaller than the height of the word “**WARNING.**”
22 Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol
23 may be printed in black and white.

24 For any Covered Product sold over the internet, the Warning shall appear on the checkout
25 page when a California delivery address is indicated for any purchase of any Covered Product or
26 on the Covered Product’s primary display page or another place where a consumer is reasonably
27 likely to encounter the Warning prior to completing the purchase. An asterisk or other identifying
28 method must be utilized to identify which products are subject to the Warning. The Warning may

1 be provided with a conspicuous hyperlink stating “**WARNING**”, or the words “**CA WARNING**”
2 or “**CALIFORNIA WARNING**”, in all capital and bold letters so long as the hyperlink goes
3 directly to a page prominently displaying the Warning without content that detracts from the
4 Warning. A Warning is not prominently displayed if the purchaser must search for it in the
5 general content of the website. In addition, the Warning shall be securely affixed to or printed
6 upon the label of each Covered Product, and it must be set off from other surrounding information
7 and enclosed in a box.

8 The Warning shall be at least the same size as the largest of any other health or safety
9 warnings also appearing on the website or on the label and in no event shall an Option 2 or Option
10 3 Warning be in a type size smaller than 6-point type. No statements intended to or likely to have
11 the effect of diminishing the impact of the Warning on the average lay person shall accompany
12 the Warning. Further, no statements may accompany the Warning that state or imply that the
13 source of the listed chemical has an impact on or results in a less harmful effect of the listed
14 chemical.

15 Chameleon Cold Brew must display the above Warning with such conspicuousness, as
16 compared with other words, statements or designs on the label, or on its website, if applicable, to
17 render the Warning likely to be read and understood by an ordinary individual under customary
18 conditions of purchase or use of the product. Where a sign or label used to provide the Warning
19 for a Covered Product includes consumer information about the Covered Product in a language
20 other than English, the Warning must also be provided in that language in addition to English.

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

24 So long as Chameleon Cold Brew can provide adequate documentation, if requested in
25 writing by ERC, Covered Products manufactured and not in the possession or under the control
26 of Chameleon Cold Brew on or prior to the Effective Date, or that have been shipped or
27 Distributed into the State of California by Chameleon Cold Brew and are, therefore, not in the
28 possession or under the control of Chameleon Cold Brew prior to the Effective Date, are not

bound by the injunctive terms set forth in this Section 3, including but not limited to the Daily Lead Exposure Level, the Daily Mercury Exposure, and the Warning and Testing Requirements, and are instead permitted to be sold as is to California consumers and are expressly released by Section 8.

3.3 Conforming Covered Products

A Conforming Covered Product is a Lead Covered Product for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per day and, with respect to the Mercury Covered Products, the “Daily Mercury Exposure Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure methodology set forth in Section 3.1.2 and the quality control methodology described in Section 3.4, and that is not known by Chameleon Cold Brew to contain other chemicals that violate Proposition 65’s safe harbor thresholds.

3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, Chameleon Cold Brew shall arrange for lead and mercury testing of the Covered Products at least once a year for a minimum of three consecutive years by arranging for testing of three (3) randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Chameleon Cold Brew intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product.

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

3.4.3 All testing pursuant to this Consent Judgment shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection and limit of quantification, sensitivity,

1 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
2 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
3 mg/kg.

4 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
5 independent third party laboratory certified by the California Environmental Laboratory
6 Accreditation Program or an independent third-party laboratory that is registered with the
7 United States Food & Drug Administration.

8 **3.4.5** Nothing in this Consent Judgment shall limit the ability of Chameleon
9 Cold Brew to conduct, or require that others conduct, additional testing of the Covered
10 Products, including the raw materials used in their manufacture.

11 **3.4.6** Within forty-five (45) days of ERC’s written request, Chameleon Cold
12 Brew shall deliver lab reports obtained pursuant to Section 3.4 to ERC and ERC shall maintain
13 the confidentiality of the reports. Chameleon Cold Brew shall retain all test results and
14 documentation for a period of two years from the date of each test.

15 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
16 from obtaining and relying upon its own testing for purposes of enforcement. Nothing in Section
17 3.4 of this Consent Judgment is intended by either party to set a precedent for the level of lead or
18 other chemicals that is permissible in consumer products under Proposition 65.

19 **4. SETTLEMENT PAYMENT**

20 **4.1** In full satisfaction of all potential civil penalties, additional settlement
21 payments, attorney’s fees, and costs, Chameleon Cold Brew shall make a total payment of
22 \$75,000.00 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due
23 Date”). Chameleon Cold Brew shall make this payment by wire transfer to ERC’s account, for
24 which ERC will give Chameleon Cold Brew the necessary account information. The Total
25 Settlement Amount shall be apportioned as follows:

26 **4.2** \$7,500.00 shall be considered a civil penalty pursuant to California Health and
27 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$5,625.00) of the civil penalty to the
28 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe

1 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
2 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,875.00) of the civil penalty.

3 **4.3** \$13,954.47 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 **4.4** \$26,917.91 shall be distributed to Aqua Terra Aeris Law Group as
6 reimbursement of ERC's attorney fees, while \$26,627.62 shall be distributed to ERC for its in-
7 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
8 costs.

9 **4.5** In the event that Chameleon Cold Brew fails to remit the Total Settlement
10 Amount owed under Section 4 of this Consent Judgment on or before the Due Date,
11 Chameleon Cold Brew shall be deemed to be in material breach of its payment obligations
12 under this Consent Judgment. ERC shall provide written notice of the delinquency to
13 Chameleon Cold Brew via electronic mail. If Chameleon Cold Brew fails to deliver the Total
14 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
15 shall accrue interest at the statutory judgment interest rate provided in the California Code of
16 Civil Procedure section 685.010, and the Defendants shall forfeit any release provisions in
17 Section 8 that are for the benefit of the Defendants and the Released Parties (as defined in
18 Section 8.1) until such time as the Total Settlement Amount is paid in full. Additionally,
19 Chameleon Cold Brew agrees to pay ERC's reasonable attorneys' fees and costs for any efforts
20 to collect the payment due under this Consent Judgment.

21 **5. MODIFICATION OF CONSENT JUDGMENT**

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

26 **5.2** If either Party seeks to modify this Consent Judgment under Section 5.1, then
27 the requesting Party must provide written notice to the non-requesting Party of its intent
28 ("Notice of Intent"). If the non-requesting Party seeks to meet and confer regarding the

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

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

16 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
17 **JUDGMENT**

18 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
19 terminate this Consent Judgment.

20 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
21 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
22 inform Chameleon Cold Brew in a reasonably prompt manner of its test results, including
23 information sufficient to permit Chameleon Cold Brew to identify the Covered Products at
24 issue. Chameleon Cold Brew shall, within forty-five (45) days following such notice, provide
25 ERC with testing information, from an independent third-party laboratory meeting the
26 requirements of Sections 3.4.3 and 3.4.4, demonstrating Chameleon Cold Brew's compliance
27 with the Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC
28 taking any further legal action.

1 **7. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
5 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application
6 to any Covered Product that is distributed or sold exclusively outside the State of California and
7 that is not used by California consumers. Within fifteen (15) days after the Effective Date, and so
8 long as Chameleon Cold Brew’s payment obligation under Section 4.1 has been satisfied, ERC
9 shall dismiss SYSTM Brands, LLC, individually and dba SYSTM Foods, Inc., and Groundforce
10 Capital Management, LLC, individually and dba PowerPlant Partners, from the Complaint with
11 prejudice.

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

13 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
14 behalf of itself and in the public interest, and Chameleon Cold Brew and its respective officers,
15 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
16 franchisees, licensees, customers (not including private label customers of Chameleon Cold
17 Brew), distributors, wholesalers, retailers, and all other upstream and downstream entities in
18 the distribution chain of any Covered Product including but not limited to SYSTM Foods, Inc.,
19 Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, and
20 SYSTM Brands LLC, and the predecessors, successors, and assigns of any of them
21 (collectively, “Released Parties”).

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

1 alleged violation of Proposition 65 or its implementing regulations arising from the failure to
2 provide Proposition 65 warnings on the Covered Products regarding lead from the Lead
3 Covered Products and/or mercury from the Mercury Covered Products up to and including the
4 Effective Date.

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

11 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
12 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
13 discovered. ERC on behalf of itself only, and Chameleon Cold Brew on behalf of itself only,
14 acknowledge that this Consent Judgment is expressly intended to cover and include all such
15 claims up through and including the Effective Date, including all rights of action therefore.
16 ERC and Chameleon Cold Brew acknowledge that the claims released in Sections 8.2 and 8.3
17 above may include unknown claims, and nevertheless waive California Civil Code section
18 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

23 ERC on behalf of itself only, and Chameleon Cold Brew on behalf of itself only, acknowledge
24 and understand the significance and consequences of this specific waiver of California Civil
25 Code section 1542.

26 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
27 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
28 exposures to lead in the Lead Covered Products and mercury in the Mercury Covered Products,

as set forth in the Notices and Complaint.

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

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

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

With a copy to:

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

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1 **FOR CHAMELEON COLD BREW, LLC:**

2 Elizabeth Stephenson, CEO
3 Jeff Conner, CFO
4 c/o SYSTM Foods
5 190 Newport Center Drive, Suite 150
6 Newport Beach, CA 92660
7 Email: estephenson@systmfoods.com
8 jeff@systmfoods.com

9 With a copy to:

10 Matthew Orr
11 Amin Wasserman Gurnani, LLP
12 515 S Flower Street, 18th Floor
13 Los Angeles, CA 90071
14 Telephone: (213) 933-2330
15 Email: morr@awglaw.com

16 **12. COURT APPROVAL**

17 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
18 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
19 Consent Judgment.

20 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
21 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
22 prior to the hearing on the motion.

23 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
24 void and have no force or effect.

25 **13. EXECUTION AND COUNTERPARTS**

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

1 **14. DRAFTING**

2 The terms of this Consent Judgment have been reviewed by the respective counsel for
3 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
4 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
5 equally in the preparation and drafting of this Consent Judgment.

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

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

12 **16. ENFORCEMENT**

13 ERC may, by motion or order to show cause before the Superior Court of Alameda
14 County, enforce the terms and conditions contained in this Consent Judgment. In any action
15 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
16 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
17 To the extent the failure to comply with the Consent Judgment constitutes a violation of
18 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
19 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
20 provided by law for failure to comply with Proposition 65 or other laws.

21 **17. ENTIRE AGREEMENT, AUTHORIZATION**

22 **17.1** This Consent Judgment contains the sole and entire agreement and
23 understanding of the Parties with respect to the entire subject matter herein, including any and
24 all prior discussions, negotiations, commitments, and understandings related thereto. No
25 representations, oral or otherwise, express or implied, other than those contained herein have
26 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
27 herein, shall be deemed to exist or to bind any Party.

28 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully

1 authorized by the Party he or she represents to stipulate to this Consent Judgment.

2 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
3 **CONSENT JUDGMENT**

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

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

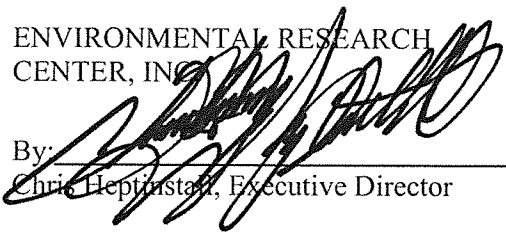
10 (2) Make the findings pursuant to California Health and Safety Code section
11 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

14 **IT IS SO STIPULATED:**

15
16 Dated: 5/14/, 2025

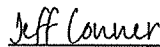
ENVIRONMENTAL RESEARCH
CENTER, INC.

17
18 By: 
19 Chris Heptinstall, Executive Director

20 Dated: 5/9/2025, 2025

CHAMELEON COLD BREW, LLC

Signed by:

21
22 
23 By: 90D287C020AE479...

24 Its:

25 ///

26 ///

27 ///

28 ///

1 **APPROVED AS TO FORM:**

2
3 Dated: May 13, 2025

AQUA TERRA AERIS LAW GROUP

4
5 By: 
6

7 Matthew C. Maclear
8 Anthony M. Barnes
9 Attorneys for Plaintiff Environmental
10 Research Center, Inc.

11 Dated: May 13, 2025

AMIN WASSERMAN GURNANI

12 By: Matt Orr
13

14 Matthew Orr
15 Attorney for Chameleon Cold Brew, LLC
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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court

EXHIBIT A



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

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

September 7, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Chameleon Cold Brew, LLC
Groundforce Capital Management, LLC, individually and dba PowerPlant Partners
SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.**



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
September 7, 2023
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Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Chameleon Organic Cold-Brew Concentrate Mocha Coffee - Lead**
2. **Chameleon Certified Organic Cold-Brew Concentrate Vanilla Coffee - Lead**
3. **Chameleon Certified Organic Cold-Brew Unsweetened Espresso Coffee – Lead**
4. **Chameleon Organic Cold-Brew Concentrate Unsweetened Black Coffee - 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 September 7, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained 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 dark ink, appearing to read "Matthew Maclear". The signature is written in a cursive, flowing style.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, SYSTM Brands LLC, individually and dba SYSTM Foods, Inc., and their Registered Agents for Service of Process only)

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



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

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, and SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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 dark ink, appearing to read "Maclear", written over a horizontal line.

Dated: September 7, 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 September 7, 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
Chameleon Cold Brew, LLC
30003 Bainbridge Rd, Tax Dept
Solon, OH 44139

Christopher J. Campbell
(Registered Agent for Chameleon Cold Brew, LLC)
6901 North Lamar, Ste 122
Austin, TX 78752

The Corporation Trust Company
(Registered Agent for Chameleon Cold Brew, LLC)
Corporation Trust Center
1209 N. Orange St.
Wilmington, DE 19801

Current President or CEO
Groundforce Capital Management, LLC, individually and
dba PowerPlant Partners
38 Miller Ave, Ste 20
Mill Valley, CA 94941

Corporation Service Company
(Registered Agent for Groundforce
Capital Management, LLC, individually and
dba PowerPlant Partners)
251 Little Falls Drive
Wilmington, DE 19808

Daniel Gluck
(Registered Agent for Groundforce
Capital Management, LLC, individually and
dba PowerPlant Partners)
38 Miller Ave, Ste 20
Mill Valley, CA 94941

Current President or CEO
SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.
3419 Via Lido, Ste 108
Newport Beach, CA 92663

Eric R. Bardwell
(Registered Agent for SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.)
3 Park Plaza, Ste 1100
Irvine, CA 92614

Capitol Services, Inc.
(Registered Agent for SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.)
108 Lakeland Ave
Dover, DE 19901

Current President or CEO
SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.
3 Corporate Plaza, Ste 100
Newport Beach, CA 92660



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Current President or CEO
SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.
5900 Hollis Street, Ste D
Emeryville, CA 94608

On September 7, 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 September 7, 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

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

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

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

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

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

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

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



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

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

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



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

September 7, 2023

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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 September 7, 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 September 7, 2023, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
September 7, 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

September 14, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Chameleon Cold Brew, LLC
Groundforce Capital Management, LLC, individually and dba PowerPlant Partners
SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.**



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Chameleon Organic Cold-Brew Concentrate Caramel Coffee - Lead**
2. **Chameleon Organic Cold-Brew Concentrate New Orleans Style Coffee - Lead**
3. **Chameleon Certified Organic Cold-Brew Concentrate Black Coffee - Lead**
4. **Chameleon Certified Organic Cold-Brew Lightly Sweetened Mexican Coffee - Lead, Mercury**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least September 14, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained 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 dark ink, appearing to read "Matthew Maclear". The signature is written in a cursive, flowing style.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, SYSTM Brands LLC, individually and dba SYSTM Foods, Inc., and their Registered Agents for Service of Process only)

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



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

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, and SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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, flowing style.

Dated: September 14, 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 September 14, 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
Chameleon Cold Brew, LLC
30003 Bainbridge Rd, Tax Dept
Solon, OH 44139

Christopher J. Campbell
(Registered Agent for Chameleon Cold Brew, LLC)
6901 North Lamar, Ste 122
Austin, TX 78752

The Corporation Trust Company
(Registered Agent for Chameleon Cold Brew, LLC)
Corporation Trust Center
1209 N. Orange St.
Wilmington, DE 19801

Current President or CEO
Groundforce Capital Management, LLC, individually and
dba PowerPlant Partners
38 Miller Ave, Ste 20
Mill Valley, CA 94941

Corporation Service Company
(Registered Agent for Groundforce
Capital Management, LLC, individually and
dba PowerPlant Partners)
251 Little Falls Drive
Wilmington, DE 19808

Daniel Gluck
(Registered Agent for Groundforce
Capital Management, LLC, individually and
dba PowerPlant Partners)
38 Miller Ave, Ste 20
Mill Valley, CA 94941

Current President or CEO
SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.
3419 Via Lido, Ste 108
Newport Beach, CA 92663

Eric R. Bardwell
(Registered Agent for SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.)
3 Park Plaza, Ste 1100
Irvine, CA 92614

Capitol Services, Inc.
(Registered Agent for SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.)
108 Lakeland Ave
Dover, DE 19901

Current President or CEO
SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.
3 Corporate Plaza, Ste 100
Newport Beach, CA 92660



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Current President or CEO
SYSTM Brands LLC, individually and
dba SYSTM Foods, Inc.
5900 Hollis Street, Ste D
Emeryville, CA 94608

On September 14, 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 September 14, 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

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

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

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

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

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

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

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

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



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

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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 September 14, 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 September 14, 2023, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



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



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

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

November 9, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Chameleon Cold Brew, LLC
Groundforce Capital Management, LLC, individually and dba PowerPlant Partners
SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.**



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

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

Chameleon Certified Organic Cold-Brew Concentrate Dark Chocolate Mocha Coffee - Lead

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 9, 2020, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 dark ink, appearing to read "Matthew Maclear". The signature is fluid and cursive, with the first name "Matthew" written in a more compact, looped style and the last name "Maclear" in a more extended, flowing script.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, SYSTM Brands LLC, individually and dba SYSTM Foods, Inc., and their Registered Agents for Service of Process only)

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 9, 2023
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, and SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

A handwritten signature in dark ink, appearing to read "Maclear", written over a horizontal line.

Dated: November 9, 2023

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 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 November 9, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified 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”** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

Chameleon Cold Brew, LLC;
Groundforce Capital Management, LLC, individually
and dba PowerPlant Partners;
SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.
c/o Matt Orr
Amin Talati Wasserman
515 South Flower Street, 18th Floor
Los Angeles, CA 90071
Email: matt@amintalati.com

On November 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 November 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:

Pamela Y. Price, 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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Page 6

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

James Clinchard, Assistant District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667
EDCDAPROP65@edcda.us

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

Devin Chandler, Program Coordinator
Lassen County
2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
SanRafael, CA 94903
consumer@marincounty.org

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@ocdapa.org

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



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

November 9, 2023

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

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

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

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@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
Santa Clara 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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 9, 2023
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On November 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 November 9, 2023, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



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

November 9, 2023

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Service List

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

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 D



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

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

September 6, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Chameleon Cold Brew, LLC
Groundforce Capital Management, LLC, individually and dba PowerPlant Partners
SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.**



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
September 6, 2024
Page 2

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

1. **Chameleon Organic Handcrafted Cold-Brew Super Concentrate Espresso Coffee - Lead**
2. **Chameleon Organic Handcrafted Cold-Brew Super Concentrate Vanilla Coffee – Lead, Mercury**
3. **Chameleon Organic Handcrafted Cold -Brew Super Concentrate Black Coffee - 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 September 6, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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



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 dark ink, appearing to read "Matthew Maclear". The signature is fluid and cursive, with the first name "Matthew" written in a more compact, looped style and the last name "Maclear" in a more extended, flowing script.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, SYSTM Brands LLC, individually and dba SYSTM Foods, Inc. and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)



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

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Chameleon Cold Brew, LLC, Groundforce Capital Management, LLC, individually and dba PowerPlant Partners, SYSTM Brands LLC, individually and dba SYSTM Foods, Inc.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

A handwritten signature in dark ink, appearing to read "Maclear", written over a horizontal line.

Dated: September 6, 2024

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 September 6, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified 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"** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

Chameleon Cold Brew, LLC;
Groundforce Capital Management, LLC, individually
and dba PowerPlant Partners; SYSTM Brands LLC,
individually and dba SYSTM Foods, Inc.
c/o Matt Orr
Amin Wasserman Gurnani
515 South Flower Street, 18th Floor
Los Angeles, CA 90071
Email: morr@awglaw.com

On September 6, 2024, 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 September 6, 2024, 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:

Pamela Y. Price, 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.*
September 6, 2024
Page 6

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

James Clinchard, Assistant District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667
EDCDAPROP65@edcda.us

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

Devin Chandler, Program Coordinator
Lassen County
2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

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@ocdapa.org

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

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

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

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@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
Santa Clara 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



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

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On September 6, 2024, 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 September 6, 2024, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



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

District Attorney, Alpine County P.O. Box 248 17300 Hwy 89 Markleeville, CA 96120	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Madera County 300 South G Street, Ste 300 Madera, CA 93637	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	

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.