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16 and dba FlavCity

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

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

22 **Plaintiff,**

23 **vs.**

24 **FLAVCITY CORP.; DTBE LLC,**  
25 **individually and dba FLAVCITY; and**  
26 **DOES 1-100**

27 **Defendants.**

28 **CASE NO. 25CV131519**

**[PROPOSED] STIPULATED**  
**CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 15, 2025

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On July 15, 2025, Plaintiff Environmental Research Center, Inc. (“ERC”), a  
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
2 (“Proposition 65”), against FlavCity Corp. (“FlavCity”), DTBE LLC, individually and dba  
3 FlavCity (“DTBE”) (FlavCity and DTBE may be collectively referred to herein as “Settling  
4 Defendants”), and Does 1-100. In this action, ERC alleges that a number of products  
5 manufactured, distributed, or sold by FlavCity and DTBE contain lead and/or cadmium,  
6 chemicals listed under Proposition 65 as carcinogens and/or reproductive toxins, and expose  
7 consumers to these chemicals at a level requiring a Proposition 65 warning. These products  
8 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
9 Products”) are: (1) FlavCity Plant Based Chocolate Peanut Butter All-In-One Vegan Protein  
10 Smoothie (lead, cadmium), (2) FlavCity Plant Based Coconut Cream Cold Brew All-In-One  
11 Vegan Protein Smoothie (lead), (3) FlavCity Vanilla Latte All-In-One Protein Smoothie  
12 Powder (lead), (4) FlavCity Chocolate All-In-One Protein Smoothie (lead, cadmium), (5)  
13 FlavCity Chocolate Peanut Butter All-In-One Protein Smoothie (lead, cadmium), (6) FlavCity  
14 Brownie Batter All-In-One Protein Smoothie (lead, cadmium), (7) FlavCity Plant Based  
15 Vanilla Cream All-In-One Vegan Protein Smoothie (lead), and (8) FlavCity Butter Coffee All-  
16 In-One Protein Smoothie (lead).

17 All of the Covered Products may also be collectively referred to herein as “Lead Covered  
18 Products.” The following Covered Products may also be referred to herein as “Cadmium  
19 Covered Products”: FlavCity Plant Based Chocolate Peanut Butter All-In-One Vegan Protein  
20 Smoothie; FlavCity Chocolate All-In-One Protein Smoothie; FlavCity Chocolate Peanut Butter  
21 All-In-One Protein Smoothie; and FlavCity Brownie Batter All-In-One Protein Smoothie.

22 **1.2** ERC and FlavCity and DTBE are hereinafter referred to individually as a  
23 “Party” or collectively as the “Parties.”

24 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
25 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
26 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
27 and encouraging corporate responsibility.

28 **1.4** For purposes of this Proposed Stipulated Consent Judgment (“Consent

1 Judgment”), the Parties agree that FlavCity and DTBE are business entities that manufacture,  
2 distribute, and/or sell the Covered Products. The Parties further agree that FlavCity and DTBE  
3 employed ten or more persons at times relevant to this action and that FlavCity and DTBE  
4 presently qualify as a “person in the course of doing business” within the meaning of Proposition  
5 65.

6 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
7 dated April 24, 2025, and May 6, 2025, that were served on the California Attorney General,  
8 other public enforcers, and FlavCity and DTBE (“Notices”). True and correct copies of the 60-  
9 Day Notices dated April 24, 2025, and May 6, 2025, are attached hereto as **Exhibits A and B**  
10 and each is incorporated herein by reference. More than 60 days have passed since the Notices  
11 were served on the Attorney General, public enforcers, FlavCity and DTBE and no designated  
12 governmental entity has filed an action against FlavCity and DTBE with regard to the Covered  
13 Products or the alleged violations.

14 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by  
15 California consumers exposes them to lead and/or cadmium at levels that require a Proposition  
16 65 warning without receiving clear and reasonable warnings from FlavCity and DTBE before  
17 their exposure, in violation of California Health and Safety Code section 25249.6. FlavCity and  
18 DTBE deny all material allegations contained in the Notices and Complaint.

19 **1.7** The Parties have entered into this Consent Judgment in order to settle,  
20 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
21 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
22 or be construed as an admission by any of the Parties or by any of their respective officers,  
23 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
24 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
25 issue of law, or violation of law.

26 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
28 any current or future legal proceeding unrelated to these proceedings.

1           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
2 as a Judgment by this Court.

3           **2.     JURISDICTION AND VENUE**

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

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

12           **3.1**     Beginning on the Effective Date, to the extent either FlavCity or DTBE qualify  
13 as a “Person in the course of doing business,” as the term is defined in Cal. Health & Safety  
14 Code § 25249.11(b) (2025), including by employing 10 or more employees in its respective  
15 business, the Settling Defendant or Settling Defendants that qualify as a “Person in the course  
16 of doing business,” shall be permanently enjoined from manufacturing for sale in the State of  
17 California, “Distributing into the State of California,” or directly selling in the State of  
18 California, any Covered Product that exposes a person to a “Daily Lead Exposure Level” of  
19 more than 0.5 micrograms of lead per day and/or any Cadmium Covered Product that exposes  
20 a person to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per  
21 day unless it meets the warning requirements under Section 3.2.

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

26                   **3.1.2**   For purposes of this Consent Judgment, the “Daily Lead Exposure  
27 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
28 micrograms of lead per gram of product, but excluding any amounts of lead deemed “naturally

1 occurring” as set forth in Section 3.1.4 below, multiplied by grams of product per serving of  
2 the product (using the largest serving size appearing on the product label), multiplied by  
3 servings of the product per day (using the largest number of recommended daily servings  
4 appearing on the label), which equals micrograms of lead exposure per day. If the label  
5 contains no recommended daily servings, then the number of recommended daily servings  
6 shall be one.

7 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure  
8 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
9 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
10 the product (using the largest serving size appearing on the product label), multiplied by  
11 servings of the product per day (using the largest number of recommended daily servings  
12 appearing on the label), which equals micrograms of cadmium exposure per day. If the label  
13 contains no recommended daily servings, then the number of recommended daily servings  
14 shall be one.

15 **3.1.4** In calculating the Daily Lead Exposure Level for a Lead Covered Product,  
16 FlavCity and DTBE shall be allowed to deduct the amount of lead which is deemed “naturally  
17 occurring” in the ingredients listed in **Table 1** that are contained in the Lead Covered Products  
18 under the following conditions: For each year that FlavCity and DTBE claims entitlement to a  
19 “naturally occurring” allowance for lead, FlavCity and DTBE shall obtain and provide to ERC  
20 the following information: (a) a written list of each ingredient in the applicable Lead Covered  
21 Product, and the amount, measured in grams, of each such ingredient contained therein, for  
22 which a “naturally occurring” allowance is claimed; (b) documentation of laboratory testing,  
23 conducted during the year for which the “naturally occurring” allowance is claimed, that  
24 complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in  
25 each ingredient listed in **Table 1** that is contained in the applicable Lead Covered Product and  
26 for which FlavCity and DTBE intends to deduct “naturally occurring” lead; (c) If the laboratory  
27 testing reveals the presence of lead in any of the ingredients listed in **Table 1** that are contained  
28 in the applicable Lead Covered Product, FlavCity and DTBE shall be entitled to deduct the

1 amount of lead contained in each ingredient, up to the full amount of the allowance for each  
 2 ingredient as shown in **Table 1**, for those ingredients that are in the applicable Lead Covered  
 3 Product; and (d) If a Lead Covered Product does not contain any of the ingredients listed in  
 4 **Table 1**, FlavCity and DTBE shall not be entitled to a deduction for “naturally occurring” lead in  
 5 that Lead Covered Product for those ingredients. The information required by Sections 3.1.4(a)  
 6 and (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary  
 7 thereof, for any year over the next three (3) years that FlavCity and DTBE shall claim  
 8 entitlement to the “naturally occurring” allowance:

9 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa Powder	Up to 1.0 microgram/gram
Chocolate Liquor	Up to 1.0 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram

23 **3.2 Clear and Reasonable Warnings**

24 If FlavCity and DTBE are required to provide a warning pursuant to Section 3.1, one of  
 25 the following warnings must be utilized (“Warning”):

26 **OPTION 1:**

27 **WARNING:** Consuming this product can expose you to chemicals including [lead] [and]  
 28 [cadmium] which is [are] 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](http://www.P65Warnings.ca.gov/food).

1 OR

2 **OPTION 2:**

3  **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

4 OR

5 **OPTION 3:**

6 **WARNING:** Risk of [cancer from exposure to lead and] reproductive harm from exposure  
7 to [lead] [and] [cadmium]. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

8 OR

9 **OPTION 4:**

10 **WARNING:** Can expose you to [lead a carcinogen and] [lead] [and] [cadmium] a  
11 reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

12  
13  
14 For all Warning options, the Warning shall begin either with the word “**WARNING,**” as  
15 indicated above, or the words “**CA WARNING**” or “**CALIFORNIA WARNING,**” in all capital  
16 letters and bold print. FlavCity and DTBE shall use the phrase “cancer and” in the Option 1 and  
17 Option 2 Warnings or “cancer from exposure to lead and” in the Option 3 Warning or “lead a  
18 carcinogen and” in the Option 4 Warning (each phrase referred to individually as a “Cancer  
19 Phrase”) if they have reason to believe that the “Daily Lead Exposure Level” for Lead Covered  
20 Products is greater than 15 micrograms of lead as determined pursuant to the quality control  
21 methodology set forth in Section 3.4 or if FlavCity and DTBE have reason to believe that another  
22 Proposition 65 chemical is present in any Covered Product which may require a cancer warning.  
23 As identified in the brackets, the warning shall appropriately reflect whether there is lead,  
24 cadmium, or multiple chemicals present in each of the Covered Products, but if there is a chemical  
25 present at a level that requires a cancer warning, the chemical requiring use of the Cancer Phrase  
26 in the Warning shall always be identified.

27 The Option 2 Warning may only be used until January 1, 2028. Any Covered Product that  
28 is manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of

1 when the product is sold to a consumer. For the Option 2 Warning, a symbol consisting of a black  
2 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the  
3 left of the text of the Warning, in a size no smaller than the height of the word “**WARNING.**”

4 Where the sign, label, or shelf tag for the product is not printed using the color yellow, the symbol  
5 may be printed in black and white.

6 The Warning shall be securely affixed to or printed upon the label of each Covered  
7 Product, and it must be set off from other surrounding information and enclosed in a box. In  
8 addition, for any Covered Product sold on websites where Settling Defendants offer Covered  
9 Products for sale over the internet to consumers in California, the Warning shall appear using  
10 one or more of the following methods: (1) a warning on the Covered Product’s main product  
11 display page; (2) a clearly marked hyperlink using the word “WARNING” or the words “CA  
12 WARNING” or “CALIFORNIA WARNING” in all capital and bold letters on the Covered  
13 Product’s main product display page that links to a page prominently displaying the Warning  
14 without content that detracts from the Warning, or (3) by otherwise prominently displaying the  
15 warning to the purchaser prior to completing the purchase. If the Warning is provided on the  
16 checkout page when a California delivery address is indicated for any purchase of any Covered  
17 Product, an asterisk or other identifying method must be utilized to identify which products on  
18 the checkout page are subject to the Warning. A Warning is not prominently displayed if the  
19 purchaser has to search for it in the general content of the website.

20 The Warning shall be at least the same size as the largest of any other health or safety  
21 warnings also appearing on the website or on the label and in no event less than six (6) point type.  
22 No statements intended to or likely to have the effect of diminishing the impact of the Warning on  
23 the average lay person shall accompany the Warning. Further no statements may accompany the  
24 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
25 less harmful effect of the listed chemical.

26 Settling Defendants must display the above Warning with such conspicuousness, as  
27 compared with other words, statements or designs on the label, or on its website, if applicable, to  
28 render the Warning likely to be read and understood by an ordinary individual under customary

1 conditions of purchase or use of the product. Where a sign or label used to provide the Warning  
2 for a Covered Product includes consumer information about the Covered Product in a language  
3 other than English, the Warning must also be provided in that language in addition to English.

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

7 If a Covered Product is being sold by an online third-party seller or downstream reseller  
8 (collectively referred to as “Third-Party Seller(s)”), who is subject to Proposition 65 and known to  
9 and authorized by either of the Settling Defendants to sell such Covered Product to California  
10 consumers, and the Settling Defendants cannot themselves add a warning to the authorized Third-  
11 party Seller’s website because the Settling Defendants lack control over such authorized Third-  
12 Party Seller’s website, then the Settling Defendants must (a) notify the authorized Third-Party  
13 Seller or its authorized agent, in writing, of the authorized Third-Party Seller’s duty to provide an  
14 internet warning as part of the condition of sale of the Covered Product to California consumers,  
15 and (b) comply with 27 C.C.R. § 25600.2 (2025 or as subsequently renumbered) including, but  
16 not limited to, by providing the information required by 27 C.C.R. § 25600.2 (2025 or as  
17 subsequently renumbered), including the warning language required by this Consent Judgment for  
18 Covered Products sold on the internet to California consumers, to any such authorized Third-Party  
19 Seller (or its authorized agent). The written notice required by this Section shall instruct the Third-  
20 Party Seller that it is responsible for providing the Warning on its website for Covered Products  
21 sold over the internet to California consumers and that the Warning shall be provided with such  
22 conspicuousness, as compared with other words, statements or designs, as to render the Warning  
23 likely to be seen, read, and understood by an ordinary individual prior to sale. Confirmation of  
24 receipt of the written notice and any renewed written notices must be received electronically or in  
25 writing from the authorized Third-Party Seller, or its authorized agent, to which the Settling  
26 Defendant(s) sent the written notice.

27 There shall be no obligation for the Settling Defendants to provide a Warning for Covered  
28 Products that are (1) manufactured before the Effective Date and (2) no longer in the possession

1 of or under the control of either of the Settling Defendants on the Effective Date, and the Section  
2 8 release applies to all such Covered Products.

3 The Parties agree that the Settling Defendants shall be deemed to be in compliance with  
4 this Consent Judgment by either adhering to this Section of the Consent Judgment or by  
5 complying with warning regulations adopted by the State of California’s Office of Environmental  
6 Health Hazard Assessment (“OEHHA”) and made applicable to the Covered Products pursuant to  
7 entry of a Modified Consent Judgment in accordance with Section 5. In the event that the  
8 OEHHA promulgates one or more regulations requiring or permitting Proposition 65 warning text  
9 and/or methods of transmission applicable to the Covered Products and the chemicals at issue,  
10 which are different from those set forth above, the Settling Defendants shall be entitled to seek a  
11 modification of this Consent Judgment pursuant to Section 5, and such modification shall not be  
12 unreasonably withheld by ERC.

13 If regulations or legislation are enacted providing that Proposition 65 warnings are no  
14 longer required with respect to lead or cadmium in the Covered Products, or should safe harbor  
15 warning exposure thresholds be promulgated, such that a lack of warning by the Settling  
16 Defendants will arguably not thereafter be a breach of this Consent Judgment, the Settling  
17 Defendants shall be entitled to seek modification of this Consent Judgment pursuant to Section 5  
18 of this Consent Judgment. ERC’s agreement to permit modification of the Consent Judgment shall  
19 not be unreasonably withheld.

### 20 **3.3 Conforming Covered Products**

21 A Conforming Lead Covered Product is a Covered Product for which the “Daily Lead  
22 Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure  
23 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
24 3.4, and that is not known by Settling Defendants to contain other chemicals that violate  
25 Proposition 65’s safe harbor thresholds. A Conforming Cadmium Covered Product is a Covered  
26 Product for which the “Daily Cadmium Exposure Level” is no greater than 4.1 micrograms of  
27 cadmium per day as determined by the exposure methodology set forth in Section 3.1.3 and the  
28 quality control methodology described in Section 3.4, and that is not known by FlavCity and

1 DTBE to contain other chemicals that violate Proposition 65's safe harbor thresholds.

2 **3.4 Testing and Quality Control Methodology**

3 **3.4.1** Beginning within one year of the Effective Date, Settling Defendants  
4 shall arrange for lead and cadmium testing of the Covered Products at least once a year for a  
5 minimum of five consecutive years by arranging for testing of three (3) randomly selected  
6 samples of each of the Covered Products, in the form intended for sale to the end-user, which  
7 Settling Defendants intend to sell or are manufacturing for sale in California, directly selling to  
8 a consumer in California or "Distributing into the State of California." If tests conducted  
9 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
10 each of five consecutive years, then the testing requirements of this Section will no longer be  
11 required as to that Covered Product. However, if during or after the five-year testing period,  
12 Settling Defendants change ingredient suppliers for any of the Covered Products and/or  
13 reformulate any of the Covered Products, Settling Defendants shall test that Covered Product  
14 annually for at least four (4) consecutive years after such change is made.

15 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or the  
16 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the  
17 three (3) randomly selected samples of the Covered Products will be controlling.

18 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
19 laboratory method that complies with the performance and quality control factors appropriate  
20 for the method used, including limit of detection and limit of quantification, sensitivity,  
21 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
22 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005  
23 mg/kg.

24 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
25 independent third party laboratory certified by the State of California or accredited by the State  
26 of California, a federal agency, the National Environmental Laboratory Accreditation Program or  
27 similar nationally recognized accrediting organization to perform the particular method of  
28 detection and analysis in question. The Settling Defendants may rely on testing obtained from

1 such laboratories as their evidence of compliance with this Section.

2 **3.4.5** Nothing in this Consent Judgment shall limit Settling Defendants’  
3 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
4 including the raw materials used in their manufacture.

5 **3.4.6** Within thirty (30) days of ERC’s written request, Settling Defendants  
6 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Settling Defendants shall  
7 retain all test results and documentation for a period of five years from the date of each test.

8 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC  
9 from obtaining and relying upon its own testing for purposes of enforcement, so long as such  
10 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent  
11 Judgment is intended by either party to set a precedent for the level of lead, cadmium, or other  
12 chemicals that is permissible in consumer products under Proposition 65. Settling Defendants  
13 likewise assert the right to rely on the testing obtained pursuant to Section 3.4.1 to respond to an  
14 enforcement notice, so long as such testing meets the requirements of 3.4.3 and 3.4.4, as  
15 applicable.

16 **4. SETTLEMENT PAYMENT**

17 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
18 payments, attorney’s fees, and costs, Settling Defendants shall collectively make a total  
19 payment of \$300,000.00 (“Total Settlement Amount”) to ERC within 10 days of the Effective  
20 Date (“Due Date”). Settling Defendants shall make this payment by wire transfer to ERC’s  
21 account, for which ERC will give Settling Defendants the necessary account information. The  
22 Total Settlement Amount shall be apportioned as follows:

23 **4.2** \$130,000.00 shall be considered a civil penalty pursuant to California Health  
24 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$97,500.00) of the civil penalty  
25 to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
27 Code section 25249.12(c). ERC will retain the remaining 25% (\$32,500.00) of the civil  
28 penalty.

1           **4.3**     \$5,708.73 shall be distributed to ERC as reimbursement to ERC for reasonable  
2 costs incurred in bringing this action.

3           **4.4**     \$96,875.06 shall be distributed to ERC as an Additional Settlement Payment  
4 (“ASP”), which shall be subject to the Court’s ongoing judicial oversight pursuant to  
5 California Code of Regulations, title 11, section 3204. ERC will utilize the ASP for activities  
6 that address the same public harm as allegedly caused by Defendants in this matter. These  
7 activities are detailed below and support ERC’s overarching goal of reducing and/or  
8 eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s  
9 activities have had, and will continue to have, a direct and primary effect within the State of  
10 California because California consumers will be benefitted by the reduction and/or elimination  
11 of exposure to lead and/or cadmium in dietary supplements and/or by providing clear and  
12 reasonable warnings to California consumers prior to ingestion of the products.

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

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

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

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

10 **4.5** \$21,125.00 shall be distributed to Michael Freund & Associates as  
11 reimbursement of ERC's attorney fees, while \$46,291.21 shall be distributed to ERC for its in-  
12 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
13 costs.

14 **4.6** In the event that Settling Defendants fail to remit the Total Settlement Amount  
15 owed under Section 4 of this Consent Judgment on or before the Due Date, Settling Defendants  
16 shall be deemed to be in material breach of their obligations under this Consent Judgment.

17 ERC shall provide written notice of the delinquency to Settling Defendants via electronic mail.  
18 If Settling Defendants fail to deliver the Total Settlement Amount within seven (7) days from  
19 the written notice, the Total Settlement Amount shall accrue interest at the statutory judgment  
20 interest rate provided in the California Code of Civil Procedure section 685.010, and any  
21 release provisions in Section 8 that are for the benefit of FlavCity and DTBE and the Released  
22 Parties (as defined in Section 8.1) shall be suspended until such time as the Total Settlement  
23 Amount is paid in full.. Additionally, Settling Defendants agree to pay ERC's reasonable  
24 attorneys' fees and costs for any efforts to collect the payment due under this Consent  
25 Judgment.

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
28 written stipulation of the Parties and upon entry by the Court of a modified consent judgment

1 or (ii) by motion of one of the Parties pursuant to Section 5.3, and based upon an agreement to  
2 modify the Consent Judgment, and upon entry by the Court of a modified consent judgment.

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

16 **5.3** In the event that FlavCity and/or DTBE initiate or otherwise request a  
17 modification under Section 5.1, and the meet and confer process leads to an agreed upon  
18 motion or stipulation for a modification of the Consent Judgment, FlavCity and/or DTBE shall  
19 reimburse ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-  
20 confer process and filing and arguing the motion or application.

21 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
22 **JUDGMENT**

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
24 terminate this Consent Judgment.

25 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
26 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
27 inform FlavCity and DTBE in a reasonably prompt manner of its test results, including  
28 information sufficient to permit FlavCity and DTBE to identify the Covered Products at issue.

1 FlavCity and DTBE shall, within thirty (30) days following such notice, provide ERC with  
2 testing information, from an independent third-party laboratory meeting the requirements of  
3 Sections 3.4.3 and 3.4.4, demonstrating FlavCity and DTBE's compliance with the Consent  
4 Judgment.

5 **6.3** To the extent that ERC contends that Settling Defendants' testing information,  
6 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and  
7 3.4.4, does not demonstrate Settling Defendants' compliance with the Consent Judgment, the  
8 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

## 9 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

24 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all  
25 claims for violations of Proposition 65 up to and including the Effective Date based on  
26 exposure to lead from the Covered Products and/or cadmium from the Cadmium Covered  
27 Products as set forth in the Notices of Violation. ERC, on behalf of itself only, hereby fully  
28 releases and discharges the Released Parties from any and all claims, actions, causes of action,

1 suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could  
2 have been asserted from the handling, use, or consumption of the Covered Products, as to any  
3 alleged violation of Proposition 65 or its implementing regulations arising from the failure to  
4 provide Proposition 65 warnings on the Covered Products regarding lead from the Covered  
5 Products and/or cadmium from the Cadmium Covered Products up to and including the  
6 Effective Date. However, Third-Party Sellers that do not provide a Warning within a  
7 reasonable time, but in no event more than 60 days, after being instructed or notified by the  
8 Settling Defendants to do so as outlined in Section 3.2, are not released from liability for  
9 violations of Proposition 65.

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

16 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
17 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
18 discovered. ERC on behalf of itself only, and FlavCity and DTBE on behalf of themselves  
19 only, acknowledge that this Consent Judgment is expressly intended to cover and include all  
20 such claims up to and including the Effective Date, including all rights of action therefor. ERC  
21 and FlavCity and DTBE acknowledge that the claims released in Sections 8.2 and 8.3 above  
22 may include unknown claims and nevertheless waive California Civil Code section 1542 as to  
23 any such unknown claims. California Civil Code section 1542 reads as follows:

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

ERC, on behalf of itself only, and FlavCity and DTBE, on behalf of themselves only,

1 acknowledge and understand the significance and consequences of this specific waiver of  
2 California Civil Code section 1542.

3 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
4 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
5 exposures to lead in the Covered Products and/or cadmium in the Cadmium Covered Products  
6 as set forth in the Notices and Complaint. However, Third-Party Sellers that do not provide a  
7 Warning within a reasonable time, but in no event more than 60 days, after being instructed or  
8 notified by the Settling Defendants to do so as outlined in Section 3.2, are not released from  
9 liability for violations of Proposition 65.

10 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
11 environmental exposures arising under Proposition 65, nor shall it apply to any of FlavCity's  
12 and DTBE's products other than the Covered Products.

13 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

17 **10. GOVERNING LAW**

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

20 **11. PROVISION OF NOTICE**

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

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

25 Chris Heptinstall, Executive Director, Environmental Research Center  
26 3111 Camino Del Rio North, Suite 400  
27 San Diego, CA 92108  
28 Ph: (619) 500-3090  
Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

///

1 With a copy to:  
2 Michael Freund Michael Freund & Associates  
3 1919 Addison Street, Suite 104  
4 Berkeley, CA 94704  
5 Telephone: (510) 499-1992  
6 Email: freund1@aol.com

7 **FOR FLAVCITY CORP.; DTBE LLC, individually and dba FLAVCITY:**  
8 Robert Parrish, Founder  
9 Or Current President or CEO of FlavCity Corp. & DTBE LLC, individually and dba FlavCity  
10 5350 W. Harold Gatty Dr., Ste A  
11 Salt Lake City, UT 84116  
12 Email: Hello@ShopFlavCity.com

13 With a copy to:  
14 Joseph Orzano  
15 Seyfarth Shaw LLP  
16 Seaport East  
17 Two Seaport Lane, Suite 1200  
18 Boston, MA 02210  
19 Telephone: (617) 946-4952  
20 Email: jorzano@seyfarth.com

21 **12. COURT APPROVAL**

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

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

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

**13. EXECUTION AND COUNTERPARTS**

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

///

1     **14. DRAFTING**

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

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

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

16     **16. ENFORCEMENT**

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

25     **17. ENTIRE AGREEMENT, AUTHORIZATION**

26             **17.1** This Consent Judgment contains the sole and entire agreement and  
27 understanding of the Parties with respect to the entire subject matter herein, including any and  
28 all prior discussions, negotiations, commitments, and understandings related thereto. No

1 representations, oral or otherwise, express or implied, other than those contained herein have  
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
3 herein, shall be deemed to exist or to bind any Party.

4 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
5 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

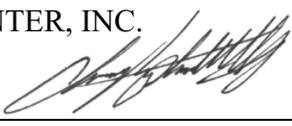
14 (2) Make the findings pursuant to California Health and Safety Code section  
15 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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

18 **IT IS SO STIPULATED:**

19 Dated: February 17, 2026

ENVIRONMENTAL RESEARCH  
CENTER, INC.

20  
21 By:   
22 Chris Heptinstall, Executive Director

23 Dated: 2/14/2026, 2026

FLAVCITY CORP.

24  
25   
26 By: Shawn Bushouse  
27 Its: CEO  
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Dated: 2/14/2026, 2026

DTBE LLC, individually and dba  
FLAVCITY

*Shawn Bushouse*

By: Shawn Bushouse  
Its: Chief Executive Officer

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2026

MICHAEL FREUND & ASSOCIATES

By: \_\_\_\_\_  
Michael Freund  
Attorney for Plaintiff Environmental  
Research Center, Inc.

Dated: \_\_\_\_\_, 2026

SEYFARTH SHAW LLP

By: \_\_\_\_\_  
Joseph Orzano  
Attorney for Defendants FlavCity Corp.,  
and DTBE LLC, individually and dba  
FlavCity

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Dated: \_\_\_\_\_, 2026

DTBE LLC, individually and dba  
FLAVCITY

\_\_\_\_\_  
By:  
Its:

**APPROVED AS TO FORM:**

Dated: February 17, 2026

MICHAEL FREUND & ASSOCIATES

By:   
Michael Freund  
Attorney for Plaintiff Environmental  
Research Center, Inc.

Dated: 2/13/2026, 2026

SEYFARTH SHAW LLP

By:   
Joseph Orzano  
Attorney for Defendants FlavCity Corp.,  
and DTBE LLC, individually and dba  
FlavCity

**[PROPOSED] ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2026 \_\_\_\_\_  
Judge of the Superior Court

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# **EXHIBIT A**

**Michael Freund & Associates**

1919 Addison Street, Suite 104  
Berkeley, CA 94704  
Voice: 510.499.1992 • Fax: 510.371.0885

Michael Freund, Esq.

April 24, 2025

**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:

**FlavCity Corp.  
DTBE LLC, individually and dba FlavCity**

**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. FlavCity Plant Based Chocolate Peanut Butter All-In-One Vegan Protein Smoothie – Lead, Cadmium**
- 2. FlavCity Plant Based Coconut Cream Cold Brew All-In-One Vegan Protein Smoothie - Lead**
- 3. FlavCity Vanilla Latte All-In-One Protein Smoothie Powder - Lead**
- 4. FlavCity Chocolate All-In-One Protein Smoothie – Lead, Cadmium**
- 5. FlavCity Chocolate Peanut Butter All-In-One Protein Smoothie – Lead, Cadmium**

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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 24, 2022, 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 expensive and time-consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to FlavCity Corp., DTBE LLC, individually and dba FlavCity, and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by FlavCity Corp. DTBE LLC, individually and dba FlavCity**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party, Environmental Research Center.

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

6. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

7. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: April 24, 2025

---

Michael Freund

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On April 24, 2025, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Robert Parrish, Founder  
or Current President or CEO  
FlavCity Corp. and DTBE LLC,  
individually and dba FlavCity  
6586 West Atlantic Ave, #1008 PMB 1008  
Delray Beach, FL 33446

Robert Parrish, Founder  
or Current President or CEO  
FlavCity Corp. and DTBE LLC,  
individually and dba FlavCity  
5350 W Harold Gatty Dr, Ste A  
Salt Lake City, UT 84116

Erica Eckman  
(Registered Agent for DTBE LLC)  
6586 West Atlantic Ave, #1008  
Delray Beach, FL 33446

Robert Parrish  
(Registered Agent for FlavCity Corp.)  
8786 Skyward St.  
Boca Raton, FL 33496

InCorp Services, Inc.  
(Registered Agent for DTBE LLC)  
One Commerce Plaza  
99 Washington Ave, Ste 805A  
Albany, NY 12210

On April 24, 2025, 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 April 24, 2025, 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:

Royl Roberts, Interim 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.*

April 24, 2025

Page 5

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

April 24, 2025

Page 6

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cfepd@yolocounty.org

On April 24, 2025, 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 April 24, 2025, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

April 24, 2025

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**Service List**

District Attorney, Alpine  
County  
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District Attorney, Amador  
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District Attorney, Butte  
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Oroville, CA 95965

District Attorney, Colusa  
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District Attorney, Los Angeles  
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Hall of Justice  
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District Attorney, Mendocino  
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## 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.<sup>1</sup> 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

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<sup>1</sup> 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](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 contaminant<sup>2</sup> 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.

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<sup>2</sup> 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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

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

# **EXHIBIT B**

**Michael Freund & Associates**

1919 Addison Street, Suite 104  
Berkeley, CA 94704  
Voice: 510.499.1992 • Fax: 510.371.0885

Michael Freund, Esq.

May 6, 2025

**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:

**FlavCity Corp.  
DTBE LLC, individually and dba FlavCity**

**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. FlavCity Brownie Batter All-In-One Protein Smoothie – Lead, Cadmium**
- 2. FlavCity Plant Based Vanilla Cream All-In-One Vegan Protein Smoothie - Lead**
- 3. FlavCity Butter Coffee All-In-One Protein Smoothie - 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 6, 2022, 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 expensive and time-consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



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Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to FlavCity Corp., DTBE LLC, individually and dba FlavCity, and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by FlavCity Corp. DTBE LLC, individually and dba FlavCity**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: May 6, 2025

---

Michael Freund

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On May 6, 2025, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Robert Parrish, Founder  
or Current President or CEO  
FlavCity Corp. and DTBE LLC,  
individually and dba FlavCity  
6586 West Atlantic Ave, #1008 PMB 1008  
Delray Beach, FL 33446

Robert Parrish, Founder  
or Current President or CEO  
FlavCity Corp. and DTBE LLC,  
individually and dba FlavCity  
5350 W Harold Gatty Dr, Ste A  
Salt Lake City, UT 84116

Erica Eckman  
(Registered Agent for DTBE LLC)  
6586 West Atlantic Ave, #1008  
Delray Beach, FL 33446

Robert Parrish  
(Registered Agent for FlavCity Corp.)  
8786 Skyward St.  
Boca Raton, FL 33496

InCorp Services, Inc.  
(Registered Agent for DTBE LLC)  
One Commerce Plaza  
99 Washington Ave, Ste 805A  
Albany, NY 12210

On May 6, 2025, 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 May 6, 2025, 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:

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

May 6, 2025

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

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Page 6

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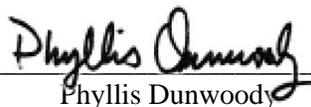
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On May 6, 2025, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto 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 May 6, 2025, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

May 6, 2025

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## 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.<sup>1</sup> 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

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<sup>1</sup> 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](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 contaminant<sup>2</sup> 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.

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<sup>2</sup> 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](mailto: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.