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5 Attorneys for Plaintiff
6 AS YOU SOW

ENDORSED
FILED
ALAMEDA COUNTY

OCT 23 2013

CLERK OF THE SUPERIOR COURT
By _____ Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA

9 AS YOU SOW, a non-profit
California corporation,

10 Plaintiff,

11 v.

12 COLART AMERICAS INC., a New
13 Jersey Corporation,

14 Defendant.

) Case No.

RG 137 00344

) **COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

) Health & Safety Code §25249.5, *et*
15 *seq.*

16
17 Plaintiff As You Sow brings this action in the interests of the general public and, on
18 information and belief, hereby alleges:

19 **INTRODUCTION**

20 1. This action seeks to remedy Defendant's continuing failure to warn consumers in
21 California that they are being exposed to ethylbenzene, a substance known to the State of
22 California to cause cancer. Defendant manufactures, packages, distributes, markets, and/or sells
23 in California certain products containing ethylbenzene (the "PRODUCTS") including:

24 **Winsor & Newton All Purpose High Gloss Varnish for General**
25 **Purpose Arts & Crafts;**
26

1 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes
2 except those given by statute to other trial courts.” The statute under which this action is
3 brought does not specify any other basis for jurisdiction.

4 8. This Court has jurisdiction over Defendant because, based on information and
5 belief, Defendant is a business having sufficient minimum contacts with California, or
6 otherwise intentionally availing itself of the California market through the distribution and sale
7 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the
8 California courts consistent with traditional notions of fair play and substantial justice.

9 9. Venue in this action is proper in the Alameda Superior Court because the
10 Defendant has violated California law in the County of Alameda.

11 **PARTIES**

12 10. PLAINTIFF As You Sow is a corporation organized under California’s
13 Corporation Law. As You Sow is dedicated to, among other causes, reducing the use and
14 misuse of hazardous and toxic substances, consumer protection, worker safety and corporate
15 responsibility.

16 11. As You Sow is a person within the meaning of H&S Code §25118 and brings
17 this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

18 12. Defendant COLART AMERICAS INC. (“DEFENDANT” or “ColArt”) is a
19 corporation organized under New Jersey’s Corporation Law and is a person doing business
20 within the meaning of H&S Code §25249.11 with an office at 11 Constitution Avenue,
21 Piscataway, NJ 08855.

22 13. DEFENDANT manufactures, packages, distributes, markets and/or sells the
23 PRODUCTS for sale or use in California and in Alameda County.

24 **STATUTORY BACKGROUND**

25 14. The People of the State of California have declared in Proposition 65 their right
26 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other

1 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

2 15. To effect this goal, Proposition 65 requires that individuals be provided with a
3 “clear and reasonable warning” before being exposed to substances listed by the State of
4 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
5 part:

6 No person in the course of doing business shall knowingly and intentionally
7 expose any individual to a chemical known to the state to cause cancer or
8 reproductive toxicity without first giving clear and reasonable warning to such
9 individual...

10 16. Proposition 65 provides that any person “violating or threatening to violate” the
11 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The
12 phrase “threatening to violate” is defined to mean creating “a condition in which there is a
13 substantial likelihood that a violation will occur.” (H&S Code §25249.11(e)). Violators are
14 liable for civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code
15 §25249.7.)

16 **FACTUAL BACKGROUND**

17 17. On June 11, 2004, the State of California officially listed the chemical
18 ethylbenzene as a chemical known to cause cancer. Ethylbenzene became subject to the
19 warning requirement one year later and was therefore subject to the "clear and reasonable"
20 warning requirements of Proposition 65 beginning on June 11, 2005. (27 California Code of
21 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*). Due to the high toxicity of
22 ethylbenzene, the No Significant Risk Level (“NSRL”) for ethylbenzene via inhalation is 54
23 µg/day (micrograms a day).

24 18. Defendants have manufactured, distributed, and/or sold the PRODUCTS
25 containing ethylbenzene within the State of California without clear and reasonable warnings
26 that the intended and reasonably foreseeable use of the products will result in exposure to
chemicals known to the State of California to cause cancer

19. At all times relevant to this action, ColArt therefore has knowingly and

1 intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED CHEMICAL
2 without first giving a clear and reasonable warning to such individuals.

3 20. The PRODUCTS have allegedly been sold by DEFENDANT for use in
4 California since at least April 21, 2010. The PRODUCTS continue to be distributed and sold in
5 California without the requisite warning information.

6 21. On March 21, 2013, As You Sow served DEFENDANT and each of the
7 appropriate public enforcement agencies with a document entitled "Notice of Violations of
8 California Health & Safety Code Section 25249.5" that provided DEFENDANT and the public
9 enforcement agencies with notice that DEFENDANT was in violation of Proposition 65 for
10 failing to warn purchasers and individuals using the PRODUCTS that the use of the
11 PRODUCTS exposes them to ethylbenzene, a chemical known to the State of California to
12 cause cancer ("Prop. 65 Notice") (a copy of the 60-Day Notice is attached hereto as Exhibit A).

13 22. The statute of limitations for an action brought to enforce Proposition 65 is three
14 years for injunctive relief and one year for penalties. (Calif. Code Civ. Proc. §§ 338(a), 340(1).)
15 On May 9, 2013, PLAINTIFF and DEFENDANT signed a Tolling Agreement, whereby the
16 Parties tolled any statute(s) of limitations for any claims that As You Sow has or may have
17 against ColArt that would have expired prior to July 22, 2013. On August 19, 2013,
18 PLAINTIFF and DEFENDANT signed an amended Tolling Agreement that extended the
19 expiration date to September 22, 2013.

20 23. As a proximate result of acts by ColArt, as a person in the course of doing
21 business within the meaning of Health & Safety Code §25249.11, individuals throughout the
22 State of California, including in the County of Alameda, have been exposed to the LISTED
23 CHEMICAL without clear and reasonable warning. The individuals subject to the violative
24 exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons
25 exposed to the PRODUCTS.
26

FIRST CAUSE OF ACTION

Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the PRODUCTS described in the March 21, 2013 Prop. 65 Notice Against ColArt

24. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 23, inclusive, as if specifically set forth herein.

25. On March 21, 2013, PLAINTIFF sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies, and to DEFENDANT (“Notice”) (attached hereto as Exhibit A). The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violator. The notice given included, *inter alia*, the following information: the name, address, and telephone number of the noticing individual; the name of the alleged violator; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations, including the chemicals involved, the routes of toxic exposure, and the specific product or type of product causing the violations, and was issued as follows:

- a. DEFENDANT and the California Attorney General were provided copies of the Notice by Certified Mail.
- b. DEFENDANT was provided a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of CCR §25903.
- c. PLAINTIFF mailed a copy of the Notice to District Attorneys for counties throughout the State, and relevant City Attorneys.
- d. The California Attorney General was provided with a Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case for this action, and attaching factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted with and relied on by the certifier, and the facts,

1 studies, or other data reviewed by those persons, pursuant to H&S Code
2 §25249.7(h) (2).

3 26. The appropriate public enforcement agencies have failed to commence and
4 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against DEFENDANT
5 based on the allegations herein.

6 27. By committing the acts alleged in this Complaint DEFENDANT at all times
7 relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by,
8 in the course of doing business, knowingly and intentionally exposing individuals who use or
9 handle the PRODUCTS to the LISTED CHEMICAL, without first providing a clear and
10 reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

11 28. By the above-described acts, DEFENDANT has violated H&S Code § 25249.6
12 and is therefore subject to an injunction ordering DEFENDANT to stop violating Proposition 65
13 and to provide warnings to all present and future customers who purchase or use the
14 PRODUCTS.

15 29. An action for injunctive relief under Proposition 65 is specifically authorized by
16 Health & Safety Code §25249.7(a).

17 30. Continuing commission by DEFENDANT of the acts alleged above will
18 irreparably harm the citizens of the State of California, for which harm they have no plain,
19 speedy, or adequate remedy at law.

20 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

21 **SECOND CAUSE OF ACTION**

22 **Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the
23 PRODUCTS described in PLAINTIFF's NOTICE Against ColArt**

24 31. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 30,
25 inclusive, as if specifically set forth herein.

26 32. By committing the acts alleged in this Complaint, DEFENDANT at all times
relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by,

1 in the course of doing business, knowingly and intentionally exposing individuals who use or
2 handle the PRODUCTS to the LISTED CHEMICAL, without first providing a clear and
3 reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

4 33. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code
5 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to a
6 LISTED CHEMICAL from the PRODUCTS.

7 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

8 **THE NEED FOR INJUNCTIVE RELIEF**

9 34. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through 33,
10 as if set forth below.

11 35. By committing the acts alleged in this Complaint, DEFENDANT has caused
12 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
13 of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury
14 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
15 CHEMICAL through the use and/or handling of the PRODUCTS.

16 **PRAYER FOR RELIEF**

17 Wherefore, PLAINTIFF accordingly prays for the following relief:

18 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
19 enjoining DEFENDANT, its agents, employees, assigns and all persons acting in concert or
20 participating with DEFENDANT, from distributing or selling the PRODUCTS in California
21 without first providing a clear and reasonable warning, within the meaning of Proposition 65,
22 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICAL;

23 B. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
24 against DEFENDANT in the amount of \$2,500 per day for each violation of Proposition 65, in
25 an amount in excess of \$1.8 million;

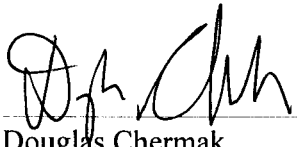
26 C. an award to PLAINTIFF of its reasonable attorneys fees and costs of suit

1 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further
2 application to the Court; and,

3 D. such other and further relief as may be just and proper.

4
5 DATED: October 23, 2013

Lozeau|Drury LLP

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8 Douglas Chermak
9 Richard Drury
10 Attorneys for Plaintiff
11 As You Sow
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Exhibit A

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T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

March 21, 2013

VIA CERTIFIED MAIL

Doug Johnston, President or
Current President
ColArt Americas Inc.
11 Constitution Avenue
Piscataway, NJ 08855-1396

David F. Daniel
Agent for Service of Process for
ColArt Americas Inc.
11 Constitution Avenue
Piscataway, NJ 08855

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent As You Sow in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

As You Sow 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.

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

ColArt Americas Inc.

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

Winsor & Newton All Purpose High Gloss Varnish for General Purpose Arts & Crafts – ethylbenzene;
Winsor & Newton All Purpose Matt Varnish for General Purpose Arts & Crafts ethylbenzene

On June 11, 2004, the State of California officially listed ethylbenzene as a chemical known to cause cancer.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator that are currently known to AS YOU SOW based on information now available to it. AS YOU SOW may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose individuals within California to the identified chemicals, without providing clear and reasonable warning. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or use of these products by consumers. The primary route of exposure to these chemicals is through inhalation. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. In particular, the products do not provide any warnings of the carcinogenic hazards associated with the ethylbenzene contained in the products.

Each of these ongoing violations has occurred since March 21, 2012, and on every day since the products were introduced in the California marketplace (following the one year anniversary dates of the listing of the chemicals at issue); and will continue every day until clear and reasonable warnings are provided to product purchasers and users and/or the listed toxins are removed from the products.

Pursuant to Section 25249.7(d) of the statute, AS YOU SOW intends to file a citizen enforcement action sixty days after effective service of this notice. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, AS YOU SOW seeks a speedy and constructive resolution to this matter. Such a resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation. Toward that end, As You Sow is willing to discuss effective remedies for the violations noted in this letter during the notice period.

As You Sow's President and Chief Counsel is Danielle Fugere, and is located at 1611 Telegraph Avenue, Suite 1450, Oakland, CA 94612; Telephone: (510) 735-8158. As You Sow has retained me in connection with this matter. You may contact Ms. Fugere directly or call me at the

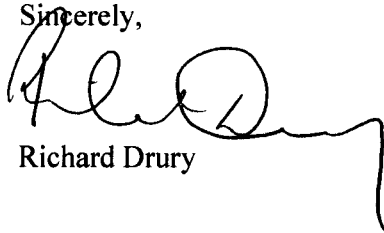
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 21, 2013

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above-listed law office address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Drury', with a long horizontal flourish extending to the right.

Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to ColArt Americas Inc. only)

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

CERTIFICATE OF MERIT

Re: As You Sow's Notice of Proposition 65 Violations by ColArt Americas Inc.

I, Douglas Chermak, declare:

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

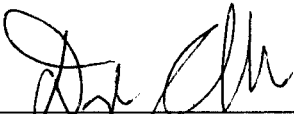
2. I am an attorney for the noticing party.

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

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

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

Dated: March 21, 2013



Douglas Chermak

CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within-entitled action. My business address is 410 12th Street, Suite 250, Oakland, CA 94607.

On March 21, 2013, 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 the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Doug Johnston, President or
Current President
ColArt Americas Inc.
11 Constitution Avenue
Piscataway, NJ 08855-1396

David F. Daniel
Agent for Service of Process for
ColArt Americas Inc.
11 Constitution Avenue
Piscataway, NJ 08855

On March 21, 2013, I served the following documents: **NOTICE OF VIOLATION, 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)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On March 21, 2013, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on March 21, 2013, in Oakland, CA.



Toyer Grear

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

March 21, 2013

Page 6

Service List

District Attorney, Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

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

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

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

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street, Suite 101
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

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

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

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

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

District Attorney, Imperial County
County Administration Building
940 West Main Street, Suite 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

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

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

District Attorney, Lake County
255 North Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

District Attorney, Madera County
209 W. Yosemite Avenue
Madera, CA 93637

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

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

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

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

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

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

District Attorney, Monterey County
230 Church Street, Bldg. 2 & 3
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney, Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Suite 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

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

March 21, 2013

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District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 G Street
Sacramento, CA 95814

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

District Attorney, San Bernardino County
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 322
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

District Attorney, San Luis Obispo County
1035 Palm Street, Room 450
San Luis Obispo, CA 93408

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

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 W. Hedding Street, West Wing
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Rm. 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001-1632

District Attorney, Sierra County
Post Office Box 457
Downieville, CA 95936

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

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

District Attorney, Sonoma County
600 Administration Drive, Room 212 J
Santa Rosa, CA 95403

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

District Attorney, Sutter County
446 Second Street, Suite 102
Yuba City, CA 95991

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

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

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

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

District Attorney, Ventura County
800 South Victoria Ave.
Ventura, CA 93009

District Attorney, Yolo County
301 Second Street
Woodland, CA 95695

District Attorney, Yuba County
215 5th St.
Marysville, CA 95901

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

San Diego City Attorney's Office
City Center Plaza
1200 Third Ave., #1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

San Jose City Attorney's Office
200 E. Santa Clara St.
16th Floor
San Jose, CA 95113

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 Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Governor’s List.” Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business 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 (NOEL),” divided by a 1,000-fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a “significant amount” of the listed chemical entering into 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 enter any drinking water source, 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” or “no observable effect” test if an individual were exposed to such an amount in drinking water.

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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment’s Proposition 65 Implementation Office at (916) 445-6900.