

1 Aqua Terra Aeris (ATA) Law Group
 2 MATTHEW C. MACLEAR, SBN 209228
 3 ANTHONY M. BARNES, SBN 19904
 828 San Pablo Avenue, Suite 115B
 Albany, CA 94706
 Telephone: (415) 568 5200
 4 E-mail: mcm@atalawgroup.com

FILED BY FAX
 ALAMEDA COUNTY

June 19, 2017

CLERK OF
 THE SUPERIOR COURT
 By Melanie Williams, Deputy

CASE NUMBER:
RG17864604

5 **Attorneys for Plaintiff**
 6 *Center for Advanced Public Awareness, Inc. ("CAPA")*

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

10 **CENTER FOR ADVANCED PUBLIC**
 11 **AWARENESS, INC.,**

12 Plaintiff,

13 vs.

14 **TELEGRAPH PATIENTS GROUP,**
 15 **INC., doing business as TELEGRAPH**
 16 **HEALTH CENTER; and DOES 1-25,**
 inclusive,

17 Defendant.

No. _____

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.6 *et seq.*)

18
 19 Plaintiff Center for Advanced Public Awareness, Inc. ("PLAINTIFF" or "CAPA") brings
 20 this action in the interest of the general public, and on information and belief, hereby alleges:

21 **INTRODUCTION**

22 1. This action seeks to remedy the continuing failure of Defendants TELEGRAPH
 23 PATIENTS GROUP, INC., doing business as Telegraph Health Center ("Telegraph") and DOES
 24 1-25 (hereinafter individually referred to as "DEFENDANT" or collectively as
 25 "DEFENDANTS") to warn consumers in California that they are being exposed to marijuana
 26 smoke, a chemical known to the State of California to cause cancer. According to the Safe
 27 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code ("H&S Code"),
 28 section 25249.5 (also known as and referred to hereinafter as "Proposition 65"), businesses must

1 provide persons with a “clear and reasonable warning” before exposing individuals to chemicals
2 known to the State to cause cancer or reproductive harm. Marijuana smoke is referred to
3 hereinafter as the “LISTED CHEMICAL.”¹

4 2. DEFENDANTS manufacture, package, distribute, market, and/or sell in California
5 products containing marijuana intended for smoking, including, but not limited to, pre-rolled
6 products, unprocessed and processed marijuana intended to be heated, combusted, then inhaled,
7 and specifically, the flowers, leaves, and other organic parts of marijuana plants (“SUBJECT
8 PRODUCTS”), the consumption and use of which result in exposure to the LISTED CHEMICAL
9 that require a “clear and reasonable” warning under Proposition 65. DEFENDANTS exposed
10 consumers, users and patients to the LISTED CHEMICAL and have failed to provide the health
11 hazard warnings required under Proposition 65.

12 3. DEFENDANTS continue manufacturing, packaging, distributing, marketing
13 and/or sales of the SUBJECT PRODUCTS without the required health hazard warnings, which
14 causes or threatens to cause, individuals to be involuntarily, unknowingly, and unwittingly
15 exposed to the LISTED CHEMICAL in violation of Proposition 65, and subjects DEFENDANTS
16 to injunctive relief for such conduct as well as civil penalties for each violation. (H&S Code
17 § 25249.7, subds. (a), (b)(1).)

18 **PARTIES**

19 4. PLAINTIFF is a non-profit public benefit corporation organized under California
20 law. CAPA is dedicated to, among other causes, providing information to consumers regarding
21 the hazards of toxins in products; protecting public health and drinking water sources by
22 preventing pollution and toxics from being discharged, released or emitted into the environment;

23 _____
24 ¹ Many of the chemical constituents that have been identified in marijuana smoke are carcinogens. The following 33
25 marijuana smoke constituents . . . are listed under Proposition 65 as causing cancer: acetaldehyde, acetamide,
26 acrylonitrile, 4-aminobiphenyl, arsenic, benz[a]anthracene, benzene, benzo[a]pyrene, benzo[b]fluoranthene,
27 benzo[j]fluoranthene, benzo[k]fluoranthene, benzofuran, 1,3-butadiene, cadmium, carbazole, catechol, chromium
28 (hexavalent compounds), chrysene, dibenz[a,h]anthracene, dibenz[a,i]pyrene, dibenzo[a,e]pyrene,
diethylnitrosamine, dimethylnitrosamine, formaldehyde, indeno[1,2,3,-c,d]pyrene, isoprene, lead, mercury, 5-
methylchrysene, naphthalene, nickel, pyridine, and quinoline. (Evidence on the Carcinogenicity of Marijuana Smoke,
Office of Environmental Health Hazard Assessment, Reproductive and Cancer Hazard Assessment Branch, March,
2009 at 5.)

1 and enforcing state and federal environmental laws and regulations through citizen suits.

2 5. CAPA is a person within the meaning of H&S Code, section 25249.11 and brings
3 this enforcement action in the public interest pursuant to H&S Code, section 25249.7, subdivision
4 (d). H&S Code, section 25249.7, subdivision (d) specifies that actions to enforce Proposition 65
5 may be brought by a person in the public interest, provided certain notice requirements are met
6 and no other public prosecutor is diligently prosecuting an action for the same violation(s).

7 6. TELEGRAPH PATIENTS GROUP, INC. is now, and was at all times relevant
8 herein, a non-profit corporation organized under the laws of California and is doing business
9 within the meaning of H&S Code, section 25249.11 at 3003 Telegraph Avenue, Oakland,
10 California 94609.

11 7. DEFENDANTS manufacture, package, distribute, market, sell in and/or offer the
12 SUBJECT PRODUCTS for sale or use in the State of California or imply by their conduct that
13 they manufacture, distribute, and/or offer the SUBJECT PRODUCTS for sale or use in the State
14 of California (including but not limited to Alameda County), which contain the LISTED
15 CHEMICAL without first giving “clear and reasonable” warnings.

16 8. DEFENDANTS, separately and each of them, are or were, at all times relevant to
17 the claims in this Complaint and continuing through the present, legally responsible for
18 compliance with the provisions of Proposition 65. Whenever an allegation regarding any act of a
19 DEFENDANTS is made herein, such allegation shall be deemed to mean that DEFENDANTS, or
20 their agent, officer, director, manager, supervisor, or employee did, or so authorized, such acts
21 while engaged in the affairs of DEFENDANTS’ business operations and/or while acting within
22 the course and scope of their employment or while conducting business for DEFENDANT(S) for
23 a commercial, nonprofit or medical purpose.

24 9. In this Complaint, when reference is made to any act of a DEFENDANT, such
25 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
26 representatives of a DEFENDANT acted or authorized such actions, and/or negligently failed and
27 omitted to act or adequately and properly supervise, control or direct its employees and agents
28

1 while engaged in the management, direction, operation or control of the affairs of the business
2 organization. Whenever reference is made to any act of any DEFENDANT, such allegation shall
3 be deemed to mean the act of each DEFENDANT acting individually, jointly, and severally as
4 defined by Civil Code, section 1430 *et seq.*

5 10. PLAINTIFF does not know the true names, capacities and liabilities of
6 DEFENDANTS DOES Nos. 1-25, inclusive, and therefore sues them under fictitious names.
7 PLAINTIFF will amend this Complaint to allege the true name and capacities of the DOE
8 Defendants upon being ascertained. Each of these Defendants was in some way legally
9 responsible for the acts, omissions, and/or violations alleged herein.

10 **JURISDICTION AND VENUE**

11 11. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
12 Procedure, sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
13 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
14 County, and because DEFENDANTS conducted, and continue to conduct, business in this
15 County with respect to the SUBJECT PRODUCTS.

16 12. This Court has jurisdiction over this action pursuant to California Constitution
17 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
18 those given by statute to other trial courts.” The statute under which this action is brought does
19 not specify any other court with jurisdiction.

20 13. This Court has jurisdiction over DEFENDANTS because they are business entities
21 that do sufficient business, have sufficient minimum contacts in California or otherwise
22 intentionally avail themselves of the California market, through the sale, marketing and use of
23 their SUBJECT PRODUCTS in California, to render the exercise of jurisdiction over them by the
24 California courts consistent with traditional notions of fair play and substantial justice.

25 14. Venue in this action is proper in the Alameda County Superior Court because the
26 cause, or part thereof, arises in Alameda County since DEFENDANTS’ violations occurred
27 (products are marketed, offered for sale, sold, used, and/or consumed without clear and
28

1 reasonable warnings) in this County.

2 **STATUTORY BACKGROUND**

3 15. The people of the State of California declared in Proposition 65 their right “[t]o be
4 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
5 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

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

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

13 17. An exposure to a chemical in a consumer product is one “which results from a
14 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
15 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
16 Regs., tit. 22, § 12601, subd. (b).) H&S Code, section 25603, subdivision (c) states that “a person
17 in the course of doing business . . . shall provide a warning to any person to whom the product is
18 sold or transferred unless the product is packaged or labeled with a clear and reasonable
19 warning.”

20 18. Pursuant to H&S Code, section 25603.1:

21 The warning may be provided by using one or more of the following methods singly
22 or in combination:

23 (a) A warning that appears on a product's label or other labeling.

24 (b) Identification of the product at the retail outlet in a manner which provides a
25 warning. Identification may be through shelf labeling, signs, menus, or a
26 combination thereof.

27 (c) The warnings provided pursuant to subparagraphs (a) and (b) shall be
28 prominently placed upon a product's label or other labeling or displayed at the retail
outlet with such conspicuousness, as compared with other words, statements,
designs, or devices in the label, labeling or display as to render it likely to be read
and understood by an ordinary individual under customary conditions of purchase

1 or use.

2 (d) A system of signs, public advertising identifying the system and toll-free
3 information services, or any other system that provides clear and reasonable
4 warnings.

5 19. Proposition 65 provides that any “person who violates or threatens to violate” the
6 statute may be enjoined in a court of competent jurisdiction. (H&S Code, § 25249.7.) The phrase
7 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
8 probability that a violation will occur” (H&S Code, § 25249.11, subd. (e).) Violators are liable for
9 civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code, § 25249.7.)

10 **FACTUAL BACKGROUND**

11 20. On December 12, 2007, the Office of Environmental Health Hazard Assessment
12 (OEHHA) announced the selection of marijuana smoke as a chemical for consideration for listing
13 by the Carcinogen Identification Committee (CIC) in the *California Regulatory Register*. The
14 CIC subsequently determined that marijuana smoke has been clearly shown, through
15 scientifically valid testing according to general accepted principles, to cause cancer.
16 Consequently, on June 19, 2009, marijuana smoke was added to the Proposition 65 list, pursuant
17 to California Code of Regulations, section 25305, subdivision (a)(1) (formerly Title 22, California
18 Code of Regulations, section 12305, subdivision (a)(1)). In summary, marijuana smoke was listed
19 under Proposition 65 as known to the State to cause cancer.

20 21. The consumer exposures that are the subject of this Complaint result from the
21 combustion and inhalation of the SUBJECT PRODUCTS resulting in exposure to the LISTED
22 CHEMICAL, to wit – marijuana smoke. Consequently, a primary route of exposure to the
23 LISTED CHEMICAL contained in marijuana is through direct smoking of the marijuana leaves,
24 flowers, and stems or pre-rolled products.

25 22. DEFENDANTS have manufactured, grown, processed, marketed, distributed,
26 offered to sell and/or sold the SUBJECT PRODUCTS for use and consumption by
27 inhalation/smoking in California since at least February 1, 2016. The SUBJECT PRODUCTS
28 continue to be distributed and sold in California without the requisite warning information.

1 23. At all times relevant to this action, DEFENDANTS, therefore, have knowingly
2 and intentionally exposed the users, consumers and/or patients to the SUBJECT PRODUCTS and
3 the LISTED CHEMICAL without first giving a clear and reasonable warning(s) to such
4 individuals.

5 24. As a proximate result of acts by DEFENDANTS, as persons in the course of doing
6 business within the meaning of H&S Code, section 25249.11, individuals throughout the State of
7 California, including in Sacramento County have been exposed to the LISTED CHEMICAL
8 without a clear and reasonable warning on the SUBJECT PRODUCTS. The individuals subject to
9 the violative exposures include normal and foreseeable users, consumers and patients of the
10 SUBJECT PRODUCTS, as well as all others exposed to the SUBJECT PRODUCTS.

11 25. On February 1, 2017 CAPA served TELEGRAPH and each of the appropriate
12 public enforcement agencies with a document entitled “Notice of Violations of California Health
13 & Safety Code Section 25249.5” that provided TELEGRAPH and the public enforcement
14 agencies with notice that TELEGRAPH was in violation of Proposition 65 for failing to warn
15 purchasers and individuals using the SUBJECT PRODUCTS that the use of the SUBJECT
16 PRODUCTS exposes them to marijuana smoke, a chemical known to the State of California to
17 cause cancer (“Prop. 65 Notice”). A true and correct copy of the 60-Day Notice (“NOTICE”) is
18 attached hereto as **Exhibit A** and is hereby incorporated by reference, and is available on the
19 Attorney General’s website located at <http://oag.ca.gov/prop65>.

20 26. The NOTICE was issued pursuant to, and in compliance with, the requirements of
21 H&S Code, section 25249.7, subdivision (d) and the statute’s implementing regulations regarding
22 the notice of the violations to be given to certain public enforcement agencies and to the violator.
23 The NOTICE included, *inter alia*, the following information: the name, address, and telephone
24 number of the noticing individual; the name of the alleged violator; the statute violated; the
25 approximate time period during which violations occurred; and descriptions of the violations
26 including the chemicals involved, the routes of toxic exposure, and the specific product or type of
27 product causing the violations.

1 27. TELEGRAPH was also provided copies of the document entitled “The Safe
2 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is
3 also known as Appendix A to Title 27 of CCR, section 25903, via Certified Mail.

4 28. The California Attorney General was provided a copy of the NOTICE and a
5 Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and
6 meritorious case for this action, and attaching factual information sufficient to establish a basis
7 for the certificate, including the identity of the persons consulted with and relied on by the
8 certifier, and the facts or other data reviewed by those persons, pursuant to H&S Code, section
9 25249.7, subdivision (h)(2) via online submission.

10 29. After expiration of the sixty (60) day notice period, the appropriate public
11 enforcement agencies have failed to commence and diligently prosecute a cause of action under
12 H&S Code, section 25249.5, *et seq.* against TELEGRAPH based on the allegations herein.

13 30. The Parties entered into agreements tolling the statute of limitations for the
14 purpose of trying to resolve the matter prior to litigation. The tolling period extended the statute
15 of limitations from March 27, 2017 through June 16, 2017. Pursuant to these agreements, any
16 statute(s) of limitation for any claims PLAINTIFF may have had related to the NOTICE was
17 tolled and extended as to PLAINTIFF and will not be included in computing the time applicable
18 to the cause of action brought against Defendants based on claims covered by the tolling
19 agreements. Those claims include the claims alleged in this action against Defendants.

20 31. Based on information and belief, TELEGRAPH has sold multiple strains of buds,
21 flowers and pre-rolled marijuana/cannabis products intended for combustion and inhalation by
22 doctor-recommended “patients” without giving clear and reasonable warnings that medical
23 cannabis can cause cancer. TELEGRAPH has sold dozens, if not hundreds, of units of SUBJECT
24 PRODUCT to a PERSON² in the State of California during each and every month from February
25 1, 2016 through the present, amounting to numerous violative products sold in that period.

26
27 ² “PERSON” includes a natural person, firm, association, organization, partnership, business, trust, corporation,
28 public entity, joint venture, and any other incorporated or unincorporated association, business or enterprise.

1 **Basis for Injunctive Relief for Violations of Health and Safety Code, section 25249.5, et seq.**
2 **concerning the SUBJECT PRODUCTS described in the February 1, 2017, Prop. 65 Notice**
3 **of Violation Against DEFENDANTS**

4 32. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 31,
5 inclusive, as if specifically set forth herein

6 33. By committing the acts alleged in this Complaint, DEFENDANTS at all times
7 relevant to this action, and continuing through the present, have violated, or threaten to violate,
8 H&S Code, section 25249.6 by, in the course of doing business, knowingly and intentionally
9 exposing individuals in California to a chemical known to the State of California to cause cancer
10 without first giving “clear and reasonable” warnings to such persons/patients who use or consume
11 the SUBJECT PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code
12 sections, 25249.6 and 25249.11, subdivision (f).

13 34. By committing the acts alleged in this Complaint, DEFENDANTS have caused or
14 threaten to cause irreparable harm for which there is no plain, speedy, or adequate remedy at law.
15 In the absence of equitable relief, DEFENDANTS will continue to create a substantial risk of
16 irreparable injury by continuing to cause patients and consumers to be involuntarily and
17 unwittingly exposed to cancer-causing marijuana smoke through the foreseeable and/or intended
18 use and/or consumption of the SUBJECT PRODUCTS.

19 35. By the above-described acts, DEFENDANTS have violated, or threaten to violate,
20 H&S Code, section 25249.6 and are therefore subject to preliminary and permanent injunctions
21 ordering DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and
22 future patients and customers, and possibly be required to provide warnings to DEFENDANTS’
23 past customers who purchased or used the SUBJECT PRODUCTS without receiving a clear and
24 reasonable warning.

25 36. An action for injunctive relief under Proposition 65 is specifically authorized by
26 H&S Code, section 25249.7(a).

27 37. Continuing commission by DEFENDANTS of the acts alleged above will
28 irreparably harm the citizens of the State of California, for which harm they have no plain,

1 speedy, or adequate remedy at law.

2 38. In the absence of preliminary and then permanent injunctive relief,
3 DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to
4 cause patients, users and/or consumers to be involuntarily, unknowingly and unwittingly exposed
5 to the LISTED CHEMICAL through the use, consumption and/or handling of the SUBJECT
6 PRODUCTS.

7 **FIRST CAUSE OF ACTION**

8 **(Civil Penalties for Violations of Health and Safety Code, section 25249.5, et seq.
9 concerning the SUBJECT PRODUCTS described in the February 1, 2017, Prop. 65 Notice
10 of Violation Against DEFENDANTS)**

11 39. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 38,
12 inclusive, as if specifically set forth herein.

13 40. By committing the acts alleged in this Complaint, DEFENDANTS at all times
14 relevant to this action, and continuing through the present, have violated, continue to violation
15 and threaten to violate H&S Code, section 25249.6 by, in the course of doing business, knowingly
16 and intentionally exposing individuals in California to a chemical known to the State of
17 California to cause cancer, to wit – marijuana smoke, without first giving clear and reasonable
18 warnings to such persons who use, consume and/or inhale the SUBJECT PRODUCTS containing
19 the LISTED CHEMICAL, pursuant to H&S Code, sections 25249.6 and 25249.11, subdivision
20 (f).

21 41. For each knowing and intentional unwarned exposure discovered within
22 limitations period, exclusive of any applicable tolling periods, DEFENDANTS are liable,
23 pursuant to H&S Code, section 25249.7, subdivision (b), for a civil penalty of up to \$2,500 per
24 day per violation for each unlawful exposure to the LISTED CHEMICALS from the SUBJECT
25 PRODUCTS, according to proof.

26 **PRAYER FOR RELIEF**

27 Wherefore, PLAINTIFF prays for the following relief:

28 A. A preliminary and permanent injunction, pursuant to H&S Code, section 25249.7,

1 subdivision (b), enjoining DEFENDANTS, their agents, employees, assigns and all persons
2 acting in concert or participating with DEFENDANTS, from manufacturing, distributing,
3 marketing, processing, selling or offering to sell the SUBJECT PRODUCTS to patients or
4 consumers in California without first providing a “clear and reasonable warning” regarding the
5 LISTED CHEMICAL within the meaning of Proposition 65;

6 B. An injunctive order, pursuant to H&S Code, section 25249.7, subdivision (b) and
7 California Code of Regulations, title 27, sections 25603 and 25603.1, compelling
8 DEFENDANTS to provide “clear and reasonable” warnings on the labels of the SUBJECT
9 PRODUCTS; or a combination of warnings at the entrance to DEFENDANTS’ medical
10 marijuana facility; on DEFENDANTS’ website; inside DEFENDANTS’ membership
11 agreement; at the point of sale; inside display cases; at concerts and conventions that
12 DEFENDANTS participate in; and/or on pamphlet for SUBJECT PRODUCTS that are delivered
13 to consumers. The warnings should indicate that the SUBJECT PRODUCTS will expose the
14 user, consumer or patient to chemicals known to the State of California to cause cancer;

15 C. An assessment of civil penalties pursuant to H&S Code, section 25249.7,
16 subdivision (b), against DEFENDANTS in the amount of up to \$2,500 per day for each violation
17 of Proposition 65, according to proof;

18 D. An award to PLAINTIFF of its reasonable attorneys’ fees and costs of suit
19 pursuant to California Code of Civil Procedure, sections 1032 *et. seq* and 1021.5, according to
20 proof; and

21 E. Such other and further relief as may be just and proper.

22 DATED: June 19, 2017

AQUA TERRA AERIS LAW GROUP

24 

25 _____
26 Matthew C. Maclear
27 Attorneys for Plaintiff
28 Center for Advanced Public Awareness, Inc.

EXHIBIT A



Matthew M. Maclear
mcm@atalawgroup.com
415.568.5200

February 1, 2017

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

ATA Law Group represents the Center for Advanced Public Awareness, Inc. ("CAPA"), 180 Promenade Circle, Suite 300, Sacramento, CA 95834; CAPA 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, fostering and increasing the public awareness of chemicals used to manufacture consumer products, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CAPA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product(s) identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual . . ." Without proper warnings regarding the toxic effects of exposures to this listed chemical(s) that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical(s) from the reasonably foreseeable use of the product.

This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), CAPA 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.

Certificate of Merit and General Information about Proposition 65. Pursuant to Title 11 C.C.R. § 3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

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

Telegraph Patients Group, Inc., doing business as Telegraph Health Center
3033 Telegraph Avenue
Oakland, CA 94609



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 1, 2017

Consumer Products and Listed Chemical. All the medical marijuana “flowers” or “buds” sold to California residents by Violators are the subject of this Notice and Violators failed to clearly and reasonably warn consumers that Marijuana Smoke¹ is a chemical known to the State of California to cause cancer.

On June 19, 2009, the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency added marijuana smoke to the Proposition 65 list.

OEHHA announced the selection of marijuana smoke as a chemical for consideration for listing by the Carcinogen Identification Committee (CIC) in the *California Regulatory Notice Register* on December 12, 2007, subsequent to consultation with the CIC at their November 19, 2007 meeting. The CIC determined that marijuana smoke was clearly shown, through scientifically valid testing according to generally accepted principles, to cause cancer. Consequently, marijuana smoke was added to the Proposition 65 list, pursuant to Title 27, California Code of Regulations, section 25305(a)(1) (formerly Title 22, California Code of Regulations, section 12305(a)(1)).

In summary, marijuana smoke was listed under Proposition 65 as known to the State to cause cancer:

Chemical	CAS No.	Toxicological Endpoint	Listing Mechanism
Marijuana smoke ²	--	Cancer	State’s qualified experts

Violations. The alleged Violator knowingly and intentionally has exposed and continues to knowingly and intentionally expose consumers within the State of California to marijuana smoke without providing clear and reasonable warning of this exposure. In particular, the products do not warn that they contain chemicals known to the State of California to cause cancer.

Route of Exposure. The consumer exposures that are the subject of this notice result from the combustion and inhalation of the products. Consequently, a primary route of exposure to the chemicals contained in marijuana is through direct smoking of the marijuana leaves, flowers, and stems.

Approximate Time of Violations. Ongoing violations have occurred every day since at least February 1, 2016, 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 this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violator violated

¹ Many of the chemical constituents that have been identified in marijuana smoke are carcinogens. The following 33 marijuana smoke constituents are listed under Proposition 65 as causing cancer: acetaldehyde, acetamide, acrylonitrile, 4-aminobiphenyl, arsenic, benz[a]anthracene, benzene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, benzofuran, 1,3-butadiene, cadmium, carbazole, catechol, chromium (hexavalent compounds), chrysene, dibenz[a,h]anthracene, dibenz[a,i]pyrene, dibenzo[a,e]pyrene, diethylnitrosamine, dimethylnitrosamine, formaldehyde, indeno[1,2,3,- c,d]pyrene, isoprene, lead, mercury, 5-methylchrysene, naphthalene, nickel, pyridine, and quinoline.

² *Marijuana Smoke Listed Effective June 19, 2009 as Known to the State of California to Cause Cancer*, Office of Environmental Health Hazard Assessment, June 19, 2009, available at: <http://oehha.ca.gov/proposition-65/cnr/marijuana-smoke-listed-effective-june-19-2009-known-state-california-cause> (last visited: Dec. 27, 2016).



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 1, 2017

Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CAPA is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 for products sold in the future. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

CAPA has retained Aqua Terra Aeris (ATA) Law Group 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 herein.**

Dated: February 1, 2017

Very truly yours,

A handwritten signature in blue ink that reads "Matthew C. Maclear".

Matthew C. Maclear
AQUA TERRA AERIS LAW GROUP
Attorney for Center for Advanced Public
Awareness

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Telegraph Patients Group, Inc., doing business as Telegraph Health Center)
Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 1, 2017

CERTIFICATE OF MERIT

**Re: Center for Advanced Public Awareness, Inc.’s Notice of Proposition 65 Violations by to
Telegraph Patients Group, Inc., doing business as Telegraph Health Center**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged 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: February 1, 2017

A handwritten signature in blue ink that reads 'Matthew C. Maclear'.

Matthew C. Maclear
AQUA TERRA AERIS LAW GROUP
Attorney for Center for Advanced Public
Awareness



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 1, 2017

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 828 San Pablo Avenue, Albany, CA 94706. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at in Albany, California.

On February 1, 2017, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

William Lucas Koziol or Current President or CEO
Telegraph Patients Group, Inc., doing business as Telegraph Health Center
3033 Telegraph Avenue
Oakland, CA 94609

William Lucas Koziol or Current Agent for Service of Process
Telegraph Patients Group, Inc., doing business as Telegraph Health Center
3033 Telegraph Avenue
Oakland, CA 94609

On February 1, 2017, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 1, 2017

On February 1, 2017, 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 below 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 US First Class Mail.

Executed on February 1, 2017, in Albany,
California.

A handwritten signature in blue ink, appearing to read "Matthew Maclear". The signature is written in a cursive style.

Matthew Maclear

SERVICE LIST

Alameda County District Attorney's Office
1225 Fallon Street
Oakland, CA 94612
EPU@da.sccgov.org