

JAN 02 2013

By CORINNA CARDEN Deputy

1 defects, and other reproductive harm

2 3. The use and/or handling of the Baby Formula causes exposures to the chemical  
3 lead at levels requiring a “clear and reasonable warning” under California's Safe Drinking  
4 Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et*  
5 *seq.* (also known as “Proposition 65”). Defendants have failed to provide the health hazard  
6 warnings required by Proposition 65.  
7

8 4. Defendants’ past sales and continued manufacturing, packaging, distributing,  
9 marketing and/or sales of the Baby Formula without the required health hazard warnings,  
10 causes or threatens to cause individuals, particularly babies, to be involuntarily and unwittingly  
11 exposed to levels of the chemical lead, which violates or threatens to violate Proposition 65.

12 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued  
13 manufacturing, packaging, distributing, marketing and/or sales of the Baby Formula in  
14 California without provision of clear and reasonable warnings regarding the risks of cancer,  
15 birth defects, and other reproductive harm posed by exposure to the chemical lead through the  
16 use and/or handling of the Baby Formula. Plaintiff seeks an injunctive order compelling  
17 Defendants to bring their business practices into compliance with Proposition 65 by providing  
18 a clear and reasonable warning to each individual who has been and who in the future may be  
19 exposed to the chemical lead from the use of the Baby Formula. Plaintiff also seeks an order  
20 compelling Defendants to identify and locate each individual person who in the past has  
21 purchased the Baby Formula, and to provide to each such purchaser a clear and reasonable  
22 warning that use of the Baby Formula will cause exposures to the chemical lead.  
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24 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties up  
25 to the maximum civil penalty of \$2,500 per day per exposure, authorized by Proposition 65, to  
26 remedy Defendants’ failure to provide clear and reasonable warnings regarding exposures to  
27 the chemical lead.  
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8. This Court has jurisdiction over Defendants because Defendants are businesses having sufficient minimum contacts with California, or otherwise intentionally availing themselves of the California market through the distribution and sale of the Baby Formula in the State of California to render the exercise of jurisdiction over Defendants by the California courts consistent with traditional notions of fair play and substantial justice.

10. On October 26, 2017, Plaintiff sent a 60-Day Notice of Proposition 65 Violations (“Notice”) to the requisite public enforcement agencies, and to Defendants (a true and correct copy of the 60-Day Notice is attached hereto as **Exhibit A** and is incorporated by reference). 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 violators. The Notice included, *inter alia*, the following information: the name, address, and telephone number of the noticing individuals; the name of the alleged violator; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations, including the chemical involved, the routes of toxic exposure, and the specific product or type of product causing the violations, and was issued as follows:

- a. Defendants were provided a copy of the Notice by Certified Mail.
- b. Defendants were 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. The California Attorney General was provided a copy of the Notice via online submission.

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

e. The district attorneys, city attorneys or prosecutors of each jurisdiction within which the Baby Formula is offered for sale within California were provided with a copy of the Notice pursuant to H&S Code § 25249.7(d)(1).

11. At least 60-days have elapsed since Plaintiff sent the Notice to Defendants. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants based on the allegations herein.

### **PARTIES**

12. Plaintiff is a non-profit association. Plaintiff operates as a fiscally sponsored project of the non-profit organization Social and Environmental Entrepreneurs. CSI’s mission is to unite consumers and industrial neighbors to reform government and industry practices for a toxic-free future.

13. CSI is a person within the meaning of H&S Code §25118 and brings this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

14. Defendant Target Corporation is a corporation organized under the State of Minnesota's Corporation Law and is a person doing business within the meaning of H&S Code §25249.11.

15. Defendant Target Brands, Inc. is a corporation organized under the State of Minnesota's Corporation Law and is a person doing business within the meaning of H&S Code §25249.11.

16. Defendants have manufactured, packaged, distributed, marketed and /or sold the Baby Formula for sale or use in California and the County of Alameda. Plaintiff is informed and believes, and thereupon alleges, that Defendants continue to manufacture, package, distribute, market and/or sell the Baby Formula for sale or use in California and in Alameda County.

## **STATUTORY BACKGROUND**

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

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

No 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 giving clear and reasonable warning to such individual....

19. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required.” (27 California Code of Regulations (“CCR”) § 25102(n).)

20. Proposition 65 provides that any “person who violates or threatens to violate”

1 the statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The  
2 phrase “threaten to violate” is defined to mean creating “a condition in which there is a  
3 substantial probability that a violation will occur” (H&S Code §25249.11(e)). Violators are  
4 liable for civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code  
5 §25249.7.)  
6

### 7 **FACTUAL BACKGROUND**

8 21. On February 27, 1987, the State of California officially listed the chemical lead  
9 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
10 requirement one year later and was therefore subject to the “clear and reasonable” warning  
11 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;  
12 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose  
13 level for lead is 0.5 µg/day (micrograms per day) for reproductive toxicity. (27 CCR  
14 § 25805(b).)  
15

16 22. On October 1, 1992, the State of California officially listed the chemicals lead  
17 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
18 subject to the warning requirement one year later and were therefore subject to the “clear and  
19 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §  
20 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no  
21 significant risk level for lead is 15 µg/day (micrograms per day). (27 CCR § 25705(b)(1).)  
22

23 23. To test Defendants’ Baby Formula for lead, Plaintiff hired a well-respected and  
24 accredited testing laboratory. The results of testing undertaken by Plaintiff of Defendants’  
25 Baby Formula show that the Baby Formula tested was in violation of the 0.5 µg/day for lead  
26 “safe harbor” daily dose limits set forth in Proposition 65’s regulations. Very significant is the  
27 fact that people, and particularly babies, are being exposed to lead through ingestion as  
28 opposed to other not as harmful methods of exposure such as dermal exposure. Ingestion of  
lead produces much higher exposure levels and health risks than dermal exposure to this

1 chemical.

2       24. At all times relevant to this action, Defendants have knowingly and  
3 intentionally exposed the users of the Baby Formula to the chemical lead without first giving a  
4 clear and reasonable warning to such individuals.

5       25. On information and belief, the Baby Formula has allegedly been sold by  
6 Defendants for use in California since at least January 2, 2015. On information and belief, the  
7 Baby Formula continues to be distributed and sold in California without the requisite warning  
8 information.

9       26. On October 26, 2017, Plaintiff served Defendants and each of the appropriate  
10 public enforcement agencies with a Proposition 65 Notice, a document entitled “Notice of  
11 Violations of California Health & Safety Code Section 25249.5,” which provided Defendants  
12 and the public enforcement agencies with notice that Defendants were in violation of  
13 Proposition 65 for failing to warn purchasers and individuals using the Baby Formula that the  
14 use of the Baby Formula exposes them to lead, a chemical known to the State of California to  
15 cause cancer and/or reproductive toxicity.

16       27. As a proximate result of acts by Defendants, as persons in the course of doing  
17 business within the meaning of Health & Safety Code §25249.11, individuals throughout the  
18 State of California, including in the County of Alameda, have been exposed to lead without a  
19 clear and reasonable warning. The individuals subject to the illegal exposures include normal  
20 and foreseeable users of the Baby Formula, as well as all other persons exposed to the Baby  
21 Formula.

22  
23                                   **FIRST CAUSE OF ACTION**  
24 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**  
25 **the Baby Formula described in the October 26, 2017 Prop. 65 Notice)**  
26 **By Plaintiff Against All Defendants**

27       28. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 27,  
28 inclusive, as if specifically set forth herein.

29. By committing the acts alleged in this Complaint, Defendants, at all times relevant to this action, and continuing through the present, have violated or threaten to violate H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use the Baby Formula described in the Notice to the chemical lead, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

30. By the above-described acts, Defendants have violated or threaten to violate H&S Code § 25249.6 and are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings to Defendants' past customers who purchased or used the Baby Formula without receiving a clear and reasonable warning.

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

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

Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

**SECOND CAUSE OF ACTION**  
**(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**  
**Baby Formula described in the October 26, 2017 Prop. 65 Notice)**  
**By Plaintiff Against All Defendants**

33. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 32, inclusive, as if specifically set forth herein.

34. By committing the acts alleged in this Complaint, Defendants at all times relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle the Baby Formula described in the Notice to the chemical lead, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§

1 25249.6 and 25249.11(f).

2 35. By the above-described acts, Defendants are liable, pursuant to H&S Code  
3 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to  
4 the chemical lead from the Baby Formula.

5 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

6 **THE NEED FOR INJUNCTIVE RELIEF**

7 36. Plaintiff re-alleges and incorporates by this reference Paragraphs 1 through 35,  
8 inclusive, as if specifically set forth herein.

9 37. By committing the acts alleged in this Complaint, Defendants have caused or  
10 threaten to cause irreparable harm for which there is no plain, speedy or adequate remedy at  
11 law. In the absence of equitable relief, Defendants will continue to create a substantial risk of  
12 irreparable injury by continuing to cause or threatening to cause consumers and babies to be  
13 involuntarily and unwittingly exposed to the chemical lead through the use and/or handling of  
14 the Baby Formula.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff prays for the following relief:

17 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),  
18 enjoining Defendants, their agents, employees, assigns and all persons acting in concert or  
19 participating with Defendants, from distributing or selling the Baby Formula in California  
20 without first providing a clear and reasonable warning, within the meaning of Proposition 65,  
21 that the users of the Baby Formula are exposed to the chemical lead;

22 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling Defendants  
23 to identify and locate each individual who has purchased the Baby Formula since January 2,  
24 2015, and to provide a warning to such person that the use of the Baby Formula will expose the  
25 user to chemicals known to birth defects and other reproductive harm;

26 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),  
27  
28

1 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

2 D. an award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant  
3 to California Code of Civil Procedure §1021.5, as Plaintiff shall specify in further application  
4 to the Court; and,  
5

6 E. such other and further relief as may be just and proper.  
7

8 DATED: January 2, 2018

LOZEAU | DRURY LLP

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12 Rebecca L. Davis  
13 Attorneys for Plaintiff  
14 Environmental Research Center, Inc.  
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# EXHIBIT A



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Oakland, Ca 94607

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rebecca@lozeaudrury.com

October 26, 2017

To: President or CEO – Target Corporation  
President or CEO – Target Brands, Inc.  
California Attorney's Office  
District Attorney's Office for 58 counties  
City Attorney's for San Francisco, San Diego, San Jose, and Los Angeles  
(See attached Certificate of Service)

From: Community Science Institute

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

Dear Addressees:

This firm represents Community Science Institute ("CSI") 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.* ("Proposition 65"). CSI is a fiscally sponsored project of the non-profit organization Social and Environmental Entrepreneurs. CSI's mission is to unite consumers and industrial neighbors to reform government and industry practices for a toxic free future. This letter serves to provide notification of these violations to you and to the public enforcement agencies of Proposition 65.

This letter constitutes notice that the entities listed below have violated and continue to violate provisions of Proposition 65. Specifically, the entity listed below has violated and continues to violate the warning requirement at § 25249.6 of the California Health & Safety Code, which 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 giving clear and reasonable warning to such individual..."

Violators: The name of the violators covered by this notice that violated Proposition 65 (hereinafter collectively referred to as the "Violators") are (1) Target Corporation, and (2) Target Brands, Inc.

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

October 26, 2017

Page 2

Consumer Products: The following specific products that are the subject of this notice are causing exposures in violation of Proposition 65 are:

1. Up & Up Toddler Beginnings Infant Formula with Iron Milk-Based Powder

Violation: The alleged Violators knowingly and intentionally exposed and continue to expose consumers within the State of California to lead without providing a Proposition 65 warning. The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead.

Route of Exposure: Use of the products identified in this notice results in human exposures to lead. The primary route of exposure is ingestion, but may also occur through inhalation and/or dermal contact.

Duration of Violation: The violations have been occurring since at least October 26, 2014, and are ongoing.

A summary of Proposition 65, prepared by the California Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter sent to the Violators.

Pursuant to California Health & Safety Code § 25249.7(d), CSI intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written agreement to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, CSI is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

CSI's Executive Director is Denny Larson, and is located at 6263 Bernhard Avenue, Richmond, California 94805, Tel. 415-845-4705. CSI has retained my firm in connection with this matter. Please direct all questions concerning this notice to me, Rebecca Davis (rebecca@lozeaudrury.com), Lozeau Drury LLP, 410 12th Street, Suite 250, Oakland, California 94607, (510) 836-4200.

Sincerely,



Rebecca L. Davis

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Community Science Institute's Notice of Proposition 65 Violations by Target Corporation and Target Brands, Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party, Community Science Institute.
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 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(s) 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, additional factual information sufficient to establish the basis for this certificate has been served on the Attorney General, 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: October 26, 2017

  
\_\_\_\_\_  
Rebecca Davis

## 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.

### **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 old, and am not a party to the within action. My business address is 410 12th Street, Suite 250, Oakland, California 94607, in Alameda County, where the mailing occurred.

On October 26, 2017, I served the following documents: **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** on the following entities by placing a true and correct copy thereof in a sealed envelope with postage fully prepaid for delivery by Certified Mail, addressed to the entity listed below, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Current President or CEO  
Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403

Current President or CEO  
Target Brands, Inc.  
1000 Nicollet Mall  
Minneapolis, MN 55403

CT Corporation System  
(Registered Agent for Service of Process for  
Target Corporation)  
818 W. 7th Street, Suite 930  
Los Angeles, CA 90017

CT Corporation System  
(Registered Agent for Service of Process for  
Target Brands, Inc.)  
1010 Dale Street N.  
St. Paul, MN 55117-5603

On October 26, 2017, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)(1)** 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 October 26, 2017, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy

thereof was sent via electronic mail to the party listed below:

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

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

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

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

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

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

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

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

On October 26, 2017, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) 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 with postage fully prepaid for delivery by First Class Mail, addressed to each of the entities on the Service List attached hereto, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Executed on October 26, 2017, in Oakland, California.

  
Daniel Charlier-Smith

## Service List

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

District Attorney, Alpine  
County  
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, 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  
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825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste  
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 N. Forbes Street  
Lakeport, CA 95453

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

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

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

District Attorney, 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  
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Nevada City, CA 95959

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

District Attorney, Placer  
County  
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Ste 240  
Roseville, CA 95678

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

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
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Avenue  
San Bernardino, CA 92415-  
0004

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

District Attorney, San  
Joaquin County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202

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

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

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

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

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

District Attorney, Sierra  
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PO Box 457  
Downieville, CA 95936

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

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

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

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

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

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

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

District Attorney, Yuba  
County  
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Marysville, CA 95901

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800  
Los Angeles, CA 90012

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San Francisco, City Attorney  
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1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113