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MARGARET J. DOWN

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Attorneys for Plaintiff Center for Food Safety

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 CENTER FOR FOOD SAFETY, a non-
16 profit corporation,

17 Plaintiff,

18 vs.

19 BOULDER BRANDS USA, INC., a
20 Delaware corporation,

21 Defendant.

Case No.: **RG18919492**

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

22 Plaintiff Center for Food Safety ("Plaintiff") brings this action in the interests of the
23 general public and, on information and belief, hereby alleges:

24 **INTRODUCTION**

25 1. This action seeks to remedy the continuing failure of defendant Boulder Brands
26 USA, Inc. ("Defendant") to warn individuals in California that they are being exposed to the
27 chemical acrylamide, a substance known to the State of California to cause cancer. These
28 exposures have occurred, and continue to occur through the manufacture, distribution, sale, and

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 consumption of the following peanut butter products, which contain the chemical acrylamide
2 (the “Peanut Butter Products”):

- 3 1. Earth Balance Natural Peanut Butter and Flaxseed Creamy
- 4 2. Earth Balance Natural Peanut Butter and Flaxseed Crunchy

5
6 2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right
7 to know statute. Under Proposition 65, it is unlawful for businesses to knowingly and
8 intentionally expose individuals in California to chemicals known to the State to cause cancer,
9 birth defects, or other reproductive harm without providing clear and reasonable warnings to
10 individuals prior to exposure.

11 3. When consumers eat the Peanut Butter Products, they are exposed to acrylamide
12 at levels requiring a “clear and reasonable warning” under Proposition 65. Yet Defendant has
13 failed to provide any warning to consumers that they are being exposed to the carcinogenic
14 chemical acrylamide.

15 4. Defendant’s past and continued manufacturing, distribution, and sale of the
16 Peanut Butter Products in California without a clear and reasonable warning causes individuals
17 to be involuntarily and unwittingly exposed to acrylamide at levels that violate Proposition 65.

18 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued
19 manufacturing, distribution, and/or sales of the Peanut Butter Products in California without
20 provision of clear and reasonable warnings regarding the risks of cancer posed by exposure to
21 acrylamide through consumption of the Peanut Butter Products. Plaintiff seeks an injunctive
22 order compelling Defendant to bring its business practices into compliance with Proposition 65
23 by providing a clear and reasonable warning to each individual who has been and who in the
24 future may be exposed to acrylamide from consumption of the Peanut Butter Products.

25 Plaintiff also seeks an order compelling Defendant to identify and locate each individual
26 person who in the past has purchased the Peanut Butter Products, and to provide to each such
27 purchaser a clear and reasonable warning that use of the Peanut Butter Products will cause
28

1 exposures to acrylamide.

2 **JURISDICTION AND VENUE**

3
4 6. This Court has jurisdiction over this action pursuant to Health and Safety Code
5 § 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and
6 pursuant to California Constitution Article VI, Section 10, which grants the Superior Court
7 “original jurisdiction in all causes except those given by statute to other trial courts.” The
8 causes of actions alleged herein are not given by statute to other trial courts.

9 8. This Court has jurisdiction over Defendant because Defendant is a business
10 having sufficient minimum contacts with California, or otherwise intentionally availing
11 themselves of the California market through the distribution and sale of the Peanut Butter
12 Products in the State of California to render the exercise of jurisdiction over this defendant by
13 the California courts consistent with traditional notions of fair play and substantial justice..

14 9. Venue in this action is proper in the Alameda Superior Court because Defendant
15 has violated or threatens to violate California law in the County of Alameda.

16 **PARTIES**

17 10. Plaintiff Center for Food Safety is a non-profit corporation working to protect
18 human health and the environment by curbing the use of harmful food production technologies
19 and by promoting organic and other forms of sustainable agriculture. Plaintiff is Center for
20 Food Safety is a person within the meaning of Health & Safety Code §25118 and brings this
21 enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).

22 11. Defendant Boulder Brands USA, Inc. is a corporation organized under the State
23 of Delaware’s corporation law and is a person doing business within the meaning of Health &
24 Safety Code § 25249.11.

25 12. Defendant has manufactured, packaged, distributed, marketed and/or offered the
26 Peanut Butter Products for sale or use in California and the County of Alameda. Plaintiff is
27 informed and believes, and thereupon alleges, that Defendant continues to manufacture,
28

1 package, distribute, market and/or sell the Peanut Butter Products in California and in Alameda
2 County.

3
4 **STATUTORY BACKGROUND**

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

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

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

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

20 16. Proposition 65 provides that any “person who violates or threatens to violate” the
21 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.
22 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a
23 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).
24 Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act.
25 Health & Safety Code § 25249.7.

26 17. On January 1, 1990, the State of California officially listed the chemical
27 acrylamide as a chemical known to cause cancer. Acrylamide became subject to the warning
28 requirement one year later and was therefore subject to the “clear and reasonable” warning
requirements of Proposition 65 beginning on January 1, 1991. Health & Safety Code §

1 25249.6 *et seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of
2 acrylamide, the no significant risk level for acrylamide is 0.2 µg/day (micrograms per day). 27
3 Cal. Code Regs. § 25705(b)(1).
4

5 **FACTUAL BACKGROUND**

6 18. To test Defendant’s Peanut Butter Products for acrylamide, Plaintiff hired a
7 well-respected and accredited testing laboratory. The results of testing undertaken by Plaintiff
8 of the Peanut Butter Products show that they were in violation of the 0.2 microgram per day
9 (“µg/day”) for acrylamide “safe harbor” daily dose limits set forth in Proposition 65’s
10 regulations.

11 19. Based on the testing results, on June 26, 2018, Plaintiff sent a 60-Day Notice of
12 Proposition 65 Violations (“Notice”) to the requisite public enforcement agencies, and to
13 Defendant (a true and correct copy of the 60-Day Notice letter is attached hereto as **Exhibit A**
14 and is incorporated by reference). The Notice was issued pursuant to, and in compliance with,
15 the requirements of Health & Safety Code §25249.7(d) and the statute’s implementing
16 regulations regarding the notice of the violations to be given to certain public enforcement
17 agencies and to the violators. The Notice included, *inter alia*, the following information: the
18 name, address, and telephone number of the noticing individuals; the name of the alleged
19 violator; the statute violated; the approximate time period during which violations occurred;
20 and descriptions of the violations, including the chemical involved, the routes of toxic
21 exposure, and the specific product or type of product causing the violations, and was issued as
22 follows:
23

- 24 a. Defendant was provided a copy of the Notice by Certified Mail.
25 b. Defendant was provided a copy of a document entitled “The Safe Drinking
26 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,”
27 which is also known as Appendix A to Title 27 of Cal. Code Regs. § 25903.
28 c. The California Attorney General was provided a copy of the Notice via online

1 submission.

2 d. The California Attorney General was provided with a Certificate of Merit by the
3 attorney for the noticing party, stating that there is a reasonable and meritorious
4 case for this action, and attaching factual information sufficient to establish a
5 basis for the certificate, including the identity of the persons consulted with and
6 relied on by the certifier, and the facts, studies, or other data reviewed by those
7 persons, pursuant to Health & Safety Code § 25249.7(h)(2).
8

9 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
10 which the Peanut Butter Products are offered for sale within California were
11 provided with a copy of the Notice pursuant to Health & Safety Code §
12 25249.7(d)(1).

13 20. At least 60-days have elapsed since Plaintiff sent the Notice to Defendant. The
14 appropriate public enforcement agencies have failed to commence and diligently prosecute a
15 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendant based on the
16 allegations herein.

17 21. On information and belief, the Peanut Butter Products have been manufactured,
18 distributed, and/or sold by Defendant for consumption in California since at least September 5,
19 2015. On information and belief, the Peanut Butter Products continue to be distributed and
20 sold in California without the requisite warning information.

21 22. At all times relevant to this action, Defendant has knowingly and intentionally
22 exposed the users of the Peanut Butter Products to acrylamide without first giving a clear and
23 reasonable warning to such individuals.
24

25 23. As a proximate result of acts of Defendant, as a person in the course of doing
26 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
27 State of California, including in the County of Alameda, have been exposed to acrylamide
28 without a clear and reasonable warning. The individuals subject to the illegal exposures

1 include normal and foreseeable users of the Peanut Butter Products, as well as all other persons
2 exposed to the Peanut Butter Products.

3
4 **FIRST CAUSE OF ACTION**
5 **(Violations of Health and Safety Code § 25249.5, *et seq.* concerning the Peanut Butter**
6 **Products described in the June 26, 2018 Prop. 65 Notice)**

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

9 25. Defendant is a person doing business within the meaning of Health & Safety
10 Code § 25249.11.

11 26. Acrylamide is listed by the State of California as a chemical known to cause
12 cancer.

13 27. Defendant has and continues to knowingly and intentionally expose individuals
14 who ingest the Peanut Butter Products to the chemical acrylamide without first providing a
15 clear and reasonable warning to such individuals pursuant to Health & Safety Code §§ 25249.6
16 and 25249.11(f).

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

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

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff prays for the following relief:

23 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §
24 25249.7(b), enjoining Defendant, its agents, employees, assigns and all persons acting in
25 concert or participating with Defendant, from distributing or selling the Peanut Butter Products
26 in California without first providing a clear and reasonable warning that consumers of the
27 Peanut Butter Products are exposed to acrylamide;

28 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b),

1 compelling Defendant to identify and locate each individual who has purchased the Peanut
2 Butter Products since September 5, 2015, and to provide a warning to such persons that
3 consumption of the Peanut Butter Products will expose the consumers to a chemical known to
4 cause cancer;

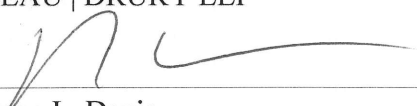
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6 3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)
7 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65;

8 4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant
9 to California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application
10 to the Court; and,

11 5. Such other and further relief as may be just and proper.

12 DATED: September 5, 2018

LOZEAU | DRURY LLP

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16 Rebecca L. Davis
17 Attorneys for Plaintiff
18 Center for Food Safety
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EXHIBIT A



T 510.836.4200
F 510.836.4205

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Oakland, Ca 94607

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rebecca@lozeaudrury.com

June 26, 2018

To: President or CEO – Boulder Brands USA, 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: Center for Food Safety

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

Dear Addressees:

This firm represents Center for Food Safety 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"). Center for Food Safety is a national non-profit public interest and environmental advocacy organization working to protect human health and the environment by curbing the use of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. 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 entity listed below has violated and continues 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..."

Violator: The name of the violator covered by this notice that violated Proposition 65 (hereinafter referred to as the "Violator") is: Boulder Brands USA, Inc.

Listed Chemical: These violations involve exposure to the listed chemical acrylamide. On January 1, 1990, California officially listed acrylamide as a chemical known to the State of California to cause cancer. On February 25, 2011, California officially listed acrylamide as a chemical known to cause reproductive and developmental toxicity.

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

June 26, 2018

Page 2

1. Earth Balance Natural Peanut Butter and Flaxseed Creamy
2. Earth Balance Natural Peanut Butter and Flaxseed Crunchy

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

Route of Exposure: Use of the products identified in this notice results in human exposures to acrylamide. The primary route of exposure is ingestion.

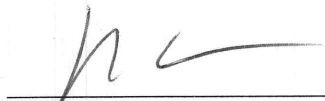
Duration of Violation: The violations have been occurring since at least June 26, 2017, and are ongoing.

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), Center for Food Safety intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator 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, Center for Food Safety 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.

Adam Keats is a Senior Attorney with Center for Food Safety. Mr. Keats is located at 303 Sacramento St., 2nd Floor, San Francisco, CA 94111, Tel. 415-826-0507. Center for Food Safety 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)

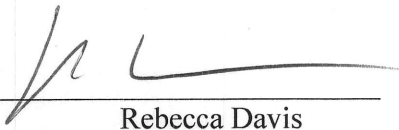
CERTIFICATE OF MERIT

**Re: Center for Food Safety's Notice of Proposition 65 Violations by
Boulder Brands USA, 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, Center for Food Safety.
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: June 26, 2018



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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

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

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 June 26, 2018, 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
Boulder Brands USA, Inc.
1600 Pearl Street, Ste 300
Boulder, CO 80302

C T Corporation System
(Registered Agent for Service of Process for
Boulder Brands USA, Inc.)
81141 Francis Avenue
Indio, CA 92201

On June 26, 2018, 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 June 26, 2018, 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

Allison Haley, District Attorney
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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

Christopher Dalbey
Deputy District Attorney
Santa Barbara County
1112 Santa Barbara St.
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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
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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

Nancy O'Malley, District Attorney
7776 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Kathryn L. Turner, Chief Deputy City
Attorney
1200 Third Ave.
San Diego, CA 92101
CityAttyCrimProp65@sandiego.gov

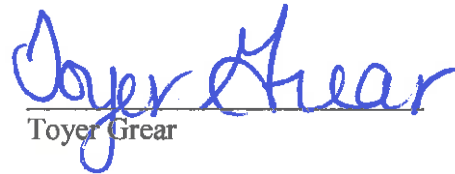
Tori Verber Salazar, District Attorney
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Jeffrey S. Rosell, District Attorney
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

On June 26, 2018, 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 June 26, 2018, in Oakland, California.


Toyer Grear

Service List

District Attorney
Alpine County
P.O. Box 248
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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
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Post Office Box 430
Willows, CA 95988

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

District Attorney
Imperial County
940 West Main St.
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

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255 N. Forbes St.
Lakeport, CA 95453

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Avenue Madera, CA 93637

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San Rafael, CA 94903

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Ukiah, CA 95482

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Nevada City, CA 95959

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Placer County
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Suite 240
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District Attorney
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Quincy, CA 95971

District Attorney
San Benito County
419 Fourth Street, 2nd
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District Attorney
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316 N. Mountain View
Avenue San Bernardino,
CA 92415-0004

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District Attorney
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Yreka, CA 96097

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Fairfield, CA 94533

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832 12th Street, Ste 300
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Yuba City, CA 95991

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Post Office Box 519
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District Attorney
Trinity County
Post Office Box 310
Weaverville, CA 96093

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423 N. Washington Street
Sonora, CA 95370

District Attorney
Yuba County
215 Fifth Street, Suite 152
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San Francisco, CA 94102

San Jose City Attorney's
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200 East Santa Clara
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