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8 Attorneys for Plaintiff,
9 Brad Van Patten

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/04/2020 at 01:18:27 PM
Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 BRAD VAN PATTEN, an individual

14 Plaintiff,

15 v.

16 The Pastene Companies, Ltd., a Massachusetts
17 corporation; and DOES 1 through 10,
18 inclusive,

19 Defendants.

Case No. 37-2020-00027206-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

20 Plaintiff Brad Van Patten (“Plaintiff”) brings this action in the interests of the general public
21 and, on information and belief, hereby alleges:

22 **INTRODUCTION**

23 1. This action seeks to remedy the continuing failure of defendant The Pastene
24 Companies, Ltd. (“Pastene”) to warn individuals in California that they are being exposed to the
25 chemical acrylamide by their product, Pitted Ripe Olives (“Product”).

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

1 exposure.

2 3. When consumers eat the Products, they are exposed to acrylamide at
3 levels requiring a “clear and reasonable warning” under Proposition 65. Yet Defendant has failed
4 to provide any warning to consumers that they are being exposed to the carcinogenic Chemical
5 acrylamide.

6 4. Defendant’s past and continued manufacturing, distribution, and sale of the Product
7 in California, without a clear and reasonable warning, causes individuals to be involuntarily and
8 unwittingly exposed to acrylamide at levels that violate Proposition 65.

9 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued
10 manufacturing, distribution, and/or sales of the Products in California without provision of clear
11 and reasonable warnings regarding the risks of cancer posed by exposure to acrylamide through
12 consumption of the Products. Plaintiff seeks an injunctive order compelling Defendant to bring
13 their business practices into compliance with Proposition 65 by providing a clear and reasonable
14 warning to each individual who has been and who in the future may be exposed to acrylamide
15 from consumption of the Products. Plaintiff also seeks an order compelling Defendant to identify
16 and locate each individual person who in the past has purchased the Product, and to provide to
17 each such purchaser a clear and reasonable warning that use of the Product will cause exposures to
18 acrylamide.

19 **JURISDICTION AND VENUE**

20 6. This Court has jurisdiction over this action pursuant to Health and Safety Code §
21 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and
22 pursuant to California Constitution Article VII, Section 10, which grants the Superior Court
23 “original jurisdiction in all causes except those given by statute to other courts.” The causes of
24 actions alleged herein are not given by statute to other trial courts.

25 7. This Court has jurisdiction over Defendant because Defendant is a business having
26 sufficient minimum contacts with California, or otherwise intentionally availing themselves of the
27 California market through the distribution and sale of the Products in the State of California to
28 render the exercise of jurisdiction over this defendant by the California courts consistent with

1 traditional notions of fair play and substantial justice.

2 8. Venue in this action is proper in the San Diego Superior Court because Defendant
3 has violated or threaten to violate California law in the County of San Diego.

4 **PARTIES**

5 9. Plaintiff Brad Van Patten is a resident of San Diego County California and working
6 to protect human health and the environment by curbing the use of harmful products. Plaintiff is a
7 person with the meaning of Health & Safety Code § 25118 and brings this enforcement action in
8 the public interest pursuant to Health & Safety Code § 25249.7(d).

9 10. Defendant is a corporation organized under the State of Massachusetts and is a
10 person doing business with the meaning of Health & Safety Code § 25249.11.

11 11. Defendant has manufactured, packaged, distributed, marketed and/or offered the
12 Product for sale or use in California and the County of San Diego. Plaintiff is informed and
13 believes, and thereupon alleges, that Defendant continues to manufacture, package, distribute,
14 market and/or sell the Products in California and in San Diego County.

15 **STATUTORY BACKGROUND**

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

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

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

26 14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or
27 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
28 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs.

1 (“CCR”) §§ 25102(n).

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

8 16. On January 1, 1990, the State of California officially listed the chemical acrylamide
9 as a chemical known to cause cancer. Acrylamide became subject to the warning requirement one
10 year later and was therefore subject to the “clear and reasonable” warning requirements of
11 Proposition 65 beginning on January 1, 1991. Health & Safety Code § 25249.6 *et seq.*; 27 Cal.
12 Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of acrylamide, the no significant risk
13 legal for acrylamide is 0.2 µg/day (micrograms per day). 27 Cal. Code Regs. § 25705(b)(1).

14 FACTUAL BACKGROUND

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

19 18. Based on testing results, on April 17, 2020, Plaintiff sent a 60-Day Notice of
20 Proposition 65 Violations (“Notice”) to defendant regarding the Produce. A true and correct copy
21 of the 60-Day Notice letter is attached here as **Exhibits A** and is incorporated herein by reference.

22 19. On the same day they were sent to Defendant, each Notice was also sent to the
23 requisite public enforcement agencies.

24 20. The Notice described above were issued pursuant to, and in compliance with, the
25 requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing regulations
26 regarding the notice of the violations to be given to certain public enforcement agencies and to the
27 violators. The Notice included, *inter alia*, the following information: the name, address, and
28 telephone number of the noticing individuals; the name of the alleged violator; the statute violated;

1 the approximate time period during which violations occurred; and descriptions of the violations,
2 including the chemical involved, the routes of toxic exposure, and the specific product or type of
3 product causing the violations, and was issued as follows:

- 4 a. The relevant Defendant was provided a copy of the Notice by U.S. Mail.
- 5 b. The relevant Defendant was provided a copy of the document entitled “The
6 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
7 Summary,” which is also known as Appendix A to Title 27 of Cal. Code Regs §
8 25903.
- 9 c. The California Attorney General was provided a copy of the Notice via online
10 submission.
- 11 d. The California Attorney General was provided with a Certificate of Merit by
12 the attorney for the noticing party, stating that there is a reasonable and
13 meritorious case for this action, and attaching factual information sufficient to
14 establish a basis for the certificate, including the identity of the persons
15 consulted with and relied on by the certified, and the facts, studies, or other data
16 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 17 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
18 which the Products are offered for sale within California were provided with a
19 copy of the Notice pursuant to Health & Safety Code § 25249.7(d)(1).

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

24 22. On information and belief, the Products have been manufactured,
25 distributed, and/or sold by Defendant for consumption in California. On information and belief,
26 the Product continues to be distributed and sold in California without the requisite warning
27 information.

28 23. At all times relevant to this action, Defendant have knowingly and intentionally

1 exposed the users of the Products to acrylamide without first giving a clear and reasonable
2 warning to such individuals.

3 24. As a proximate result of acts of Defendant as persons in the course of doing
4 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
5 State of California, including the County of San Diego, have been exposed to acrylamide without
6 a clear and reasonable warning. The individuals subject to the illegal exposures include normal
7 and foreseeable users of the Products, as well as all other persons exposed to the Products.

8
9 **FIRST CAUSE OF ACTION**
(Violations of Health and Safety Code § 25249.5, et seq.)

10
11 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,
12 inclusive, as if specifically set forth herein.

13 26. Defendant is a person doing business within the meaning of Health & Safety Code
14 § 25249.11.

15 27. Acrylamide is listed on the State of California as a chemical known to cause
16 cancer.

17 28. Defendant has and continues to knowingly and intentionally expose individuals
18 who ingest the Products to the chemical acrylamide without first providing a clear and reasonable
19 warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).

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

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiff prays for the following relief:

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

1 to acrylamide;

2 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling
3 Defendants to identify and locate each individual who has purchased the Product and to provide a
4 warning to such persons that consumption of the Product will expose the consumers to a chemical
5 known to cause cancer.

6 3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)
7 against Defendants 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 to
9 California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the
10 Court; and,

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

12
13 DATED: August 4, 2020

LAW OFFICES OF GEORGE RIKOS

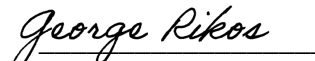
14
15 
16 George Rikos
17 Attorney for Plaintiff
18 Brad Van Patten
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Exhibit A

LAW OFFICES OF GEORGE RIKOS

555 West Beech Street • San Diego, CA 92101 • TEL: (858) 342-9161 • FAX: (858) 724-1453

April 17, 2020

**SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING
WATER AND TOXIC ENFORCEMENT ACT OF 1986**
(Cal. Health & Safety Code § 25249.5, et see.)
(“Proposition 65”)

John F. Franciosa
Registered Agent for The Pastene Companies, Ltd.
330 Turnpike Street
Canton, MA 02021

AND THE PUBLIC PROSECTUTOERS LISTED ON THE DISTRIBUTION LIST
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Pitted Ripe Olives containing Acrylamide**

To Whom it May Concern:

Brad Van Patten, the noticing party, located at **555 West Beech Street, Suite 500, San Diego, California, 92101**, serves this Notice of Violation (“Notice”) upon Safeway, Inc. (“Violator”) pursuant to and in compliance with Proposition 65. The Violator may contact Law Offices of George Rikos concerning this Notice through its designated person, George Rikos, 555 West Beech, Suite 500, San Diego, California 92101, Telephone no. (858) 342-9161, email: George@georgerikoslaw.com. This Notice satisfies a prerequisite for Mr. Van Patten to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. Mr. Van Patten is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- Brad Van Patten is a resident of the State of California. By sending this Notice, Mr. Van Patten is acting “in the public interest” pursuant to Proposition 65. Mr. Van Patten is a concerned citizen and resident of California and is dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states 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 ...” *Cal. Health & Safety Code* § 25249.6.
- **Pitted Ripe Olives** contain **Acrylamide**, which is known to the State of California to cause both cancer and reproductive toxicity, such as birth defects and other reproductive harm. **Acrylamide** was added to the Proposition 65 list in 1990. In February of 2011, it was added to the Proposition list as causing reproductive and developmental effects. Both additions took place long before Mr. Van Patten served this Notice.
 - An exemplar of the violations caused by **Pitted Ripe Olives**, which is an exemplar product only, includes but is not limited to: **Pastene Pitted Ripe Olives**.
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27* § 25602(b).

Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Pitted Ripe Olives**. The packaging for **Pitted Ripe Olives** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to **Pitted Ripe Olives**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **Pitted Ripe Olives**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, or a combination thereof.

The principal routes of exposure were through ingestion.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, Mr. Van Patten gives notice of the alleged violation to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus five (5) calendar days because the place of address is within the

Pastene
April 17, 2020
Re: Page 3

State of California), Mr. Van Patten may file suit. *See Cal. Health & Safety Code* § 25249.7(d)(1); *Cal. Code Regs. 27* § 25903(d)(1); and *Cal. Code Civ. Proc.* § 1013. Mr. Van Patten remains open to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: April 17, 2020

George Rikos

George Rikos, Esq.

Attorney for Brad Van Patten

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.

Olives containing Acrylamide

CERTIFICATE OF MERIT

Health & Safety Code Section 25249.7(d)

I, George Rikos, hereby declares:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiffs’ case can be established, and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certified, and (2) the facts, studies, or other data reviewed by those persons.

Dated: April 17, 2020

By: George Rikos
George Rikos

CERTIFICATE OF SERVICE

Health & Safety Code Section 25249.7(d)

I am over the age of 18 and not a party to this case. I am a resident of employed in the county where the mailing occurred. My business address is 555 West Beech St., Suite 500, San Diego, California 92101.

ON THE DATE SHOWN BELOW, I CAUSED TO BE SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: San Diego, California

Name and address of each party to whom documents were mailed:

John F. Franciosa
Registered Agent for The Pastene Companies, Ltd.
330 Turnpike Street
Canton, MA 02021

Name and address of each public prosecutor to whom documents were mailed:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: April 17, 2020

By:


George Rikos

MAIL SERVICE LIST

The Honorable Michael Atwell
Alpine County District Attorney
P.O. Box 248
Markleeville, CA 96120

The Honorable Todd Riebe
Amador County District Attorney
708 Court Street
Jackson, CA 95642

The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Drive, Suite 245
Oroville, CA 95965

The Honorable Barbara Yook
Calaveras County District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249

The Honorable Matthew R. Beauchamp
Colusa County District Attorney
346 Fifth Street, Suite 101
Colusa, CA 95932

The Honorable Diana Becton
Contra Costa County District Attorney
900 Ward Street
Martinez, CA 94553

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

The Honorable Vern Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667

The Honorable Lisa Smittcamp
Fresno County District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721

The Honorable Dwayne Stewart
Glenn County District Attorney
P.O. Box 430
Willows, CA 95988

The Honorable Maggie Fleming
Humboldt County District Attorney
825 5th Street, Fourth Floor
Eureka, CA 95501

The Honorable Gilbert Otero
Imperial County District Attorney
940 West Main Street, Suite 102
El Centro, CA 92243

The Honorable Thomas Hardy
Inyo County District Attorney
P.O. Box Drawer D
Independence, CA 93526

The Honorable Lisa Green
Kern County District Attorney
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