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8 Counsel for Plaintiff
9 ECOLOGICAL RIGHTS FOUNDATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 ECOLOGICAL RIGHTS FOUNDATION,
13 Plaintiff,
14 v.
15 WALMART INC., & DOES 1 through 10,
16 inclusive,
17 Defendants.

Case No. **CGC-21-596389**

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code § 25249.5 et seq.

(Other)

18 Plaintiff, Ecological Rights Foundation (“EcoRights”), in the public interest, based on
19 information and belief, and knowledge and investigation of counsel allege as follows:
20

21 **INTRODUCTION**

22 1. This Complaint seeks civil penalties and an injunction against WALMART INC., and
23 DOES 1 through 10, inclusive (collectively “Defendants”) to remedy continuing failure to provide
24 clear and reasonable warnings to individuals in California about exposures to styrene, a chemical
25 known to the State of California to cause cancer.

26 2. Such exposures have occurred and continue to occur, through the use of 3D pens that
27 Defendants manufacture, distribute, market and/or sell in the State (“Products”). These Products
28

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

11/05/2021
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

1 are intended to be used with filaments incorporating a styrene monomer.

2 3. When people use 3D pens with filaments incorporating a styrene monomer, the 3D pens
3 heat these filaments and thus release styrene into the air. People using the 3D pens with filaments
4 incorporating a styrene monomer, and others standing in the same room, inhale styrene in the
5 normal course of use. .

6 4. Under California's Proposition 65, California Health & Safety Code § 25249.5, *et seq.*, it is
7 unlawful for businesses to knowingly and intentionally expose individuals in California to
8 chemicals known to the State to cause cancer, birth defects, or other reproductive harm without
9 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
10 introduce Products into the California marketplace, exposing Product users to styrene. Despite the
11 fact that Defendants expose consumers and individuals to styrene, Defendants provide no clear and
12 reasonable warnings about the exposures to styrene, a listed carcinogen. Defendants' conduct thus
13 violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

14 5. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
15 to compel each Defendant to bring its business practices into compliance with Proposition 65 by
16 providing a clear and reasonable warning to each individual who has been exposed to styrene from
17 use of the Products since August 30, 2018, and to those who in the future may be exposed to
18 styrene from use of the Products. Plaintiff seeks an order that each Defendant identify and locate
19 each person to whom it conveyed Products since August 30, 2018 and to provide to each such
20 individual, as well as new purchasers and Product users, a clear and reasonable warning that use of
21 the Products causes exposure to a chemical known to cause cancer.

22 6. In addition to injunctive relief, Plaintiff seeks civil penalties to remedy Defendants' failure
23 to provide clear and reasonable warnings regarding exposure to a chemical known to cause cancer.

24 **PARTIES**

25 7. Plaintiff Ecological Rights Foundation is a non-profit public benefit organization dedicated
26 to, among other causes, protecting California residents from toxic exposures, environmental and
27 human health education, and consumer rights. Ecological Rights Foundation is incorporated under
28 the laws of the State of California and is a "person" pursuant to Health & Safety Code

1 §25249.11(a). EcoRights brings this enforcement action in the public interest pursuant to Health &
2 Safety Code §25249.7(d).

3 8. WALMART INC. is a person in the course of doing business within the meaning of Health
4 & Safety Code §25249.11(b). WALMART INC. manufactures, markets, distributes, and/or sells
5 the Products for sale and use in the State of California.

6 9. EcoRights is unaware of the true names and capacities of Defendants DOES 1 through 10,
7 inclusive, and therefore sues said Defendants under fictitious names. EcoRights will amend its
8 petition and complaint to show the true names and capacities of Does 1 through 10 when the same
9 have been ascertained. Each of the Doe Defendants is the agent and/or employee of one of the
10 other Defendants, and each performed acts on which this action is based within the course and
11 scope of such Defendants' agency and/or employment. EcoRights is informed and believes and
12 therefore alleges that each of the Defendants are legally responsible in some manner for the events
13 and happenings referred to herein.

14 **JURISDICTION**

15 10. The Court has jurisdiction over this action pursuant to California Health & Safety Code
16 Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court "original
17 jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6 of the
18 Health & Safety Code, which contains the statutes under which this action is brought, does not grant
19 jurisdiction to any other trial court.

20 11. This Court also has jurisdiction over Defendants because each Defendant business has
21 sufficient minimum contacts in California and within the County of San Francisco. Defendants
22 intentionally availed itself of the California and San Francisco County markets. It is thus consistent
23 with traditional notions of fair play and substantial justice for the San Francisco County Superior
24 Court to exercise jurisdiction over Defendants.

25 12. Venue is proper in San Francisco County Superior Court because one or more of the
26 violations arise in the County of San Francisco.

27 **BACKGROUND**

28 13. The People of the State of California have declared by initiative under Proposition 65 their

1 right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
2 reproductive harm.” Proposition 65, § 1(b). To effectuate this goal, Proposition 65 prohibits
3 exposing people to chemicals listed by the State of California as known to cause cancer, birth
4 defects, or other reproductive harm without a “clear and reasonable warning” unless the business
5 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety
6 Code Section 25249.6 states, in pertinent part:

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

11 14. On April 22, 2016, the State of California officially listed styrene as a chemical known to
12 cause cancer. On April 22, 2017, styrene exposures became subject to the clear and reasonable
13 warning requirements under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code Section
14 25249.10(b).

15 15. Plaintiff brings this enforcement action against Defendants pursuant to Health & Safety
16 Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of the Notice of
17 Violations dated August 30, 2021, (“Notice of Violation”), the date on which EcoRights sent to
18 California's Attorney General (AG Notice #2021-02147), every county District Attorney in
19 California, and to the City Attorneys of every California City with a population greater than
20 750,000. On the same day, Plaintiff sent a substantively identical letter to each of the Defendants.
21 In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice of
22 Violation included the following information: (1) the name and address of each violator; (2) the
23 statute violated; (3) the time period during which violations occurred; (4) specific descriptions of
24 the violations, including (a) the routes of exposure to styrene from the Products, and (b) specific
25 examples of Products sold and used in violation of Proposition 65; and (5) the name of the specific
26 Proposition 65-listed chemical that is the subject of the violations described in each Notice of
27 Violation.

28 16. Accompanying the Notice of Violation sent to Defendants was a summary of Proposition
29 65 that was prepared by California’s Office of Environmental Health Hazard Assessment. In

1 addition, the Notices of Violation were accompanied by a Certificate of Service attesting to the
2 service of the Notice of Violation on each entity which received it. Pursuant to Health & Safety
3 Code Section 25249.7(d) and 11 C.C.R. § 3101, Plaintiff also sent a Certificate of Merit with the
4 Notices of Violation attesting to the reasonable and meritorious basis for the action. Plaintiff
5 enclosed factual information sufficient to establish the basis of the Certificate of Merit with the
6 Notice of Violation letters sent to the Attorney General.

7 17. None of the public prosecutors with the authority to prosecute violations of Proposition 65
8 has commenced and/or is diligently prosecuting a cause of action against Defendants under Health
9 & Safety Code Section 25249.5 *et seq.*, based on the claims asserted in EcoRights' Notice of
10 Violation.

11 18. Defendants knowingly and intentionally expose individuals to styrene. Under Proposition
12 65, an exposure is "knowing" where the party responsible for such exposure has "knowledge of the
13 fact that a[n] . . . exposure to a chemical listed pursuant to [Health & Safety Code § 25249.8(a)] is
14 occurring. No knowledge that . . . exposure is unlawful is required." 27 C.C.R. § 25102(n). This
15 knowledge may be either actual or constructive. *See, e.g.*, Final Statement of Reasons Revised
16 (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, § 12201). At all times since April
17 22, 2016, the date styrene was listed by the State of California as known to cause cancer,
18 Defendants have possessed actual and constructive knowledge that the Products contain and cause
19 exposures to styrene. As a company that manufactures, markets, distributes and/or sells Products
20 for use in the State of California, each Defendant knows or should know that styrene exposures to
21 users of the Products are a natural and foreseeable consequence of Defendants' placing the
22 Products into the stream of commerce. Defendants' knowledge and intent of exposure to styrene
23 from ordinary use of the Products is also evidenced by Defendants' product manuals and by
24 additional sources of information, including but not limited to: information provided by
25 Defendants' vendors and suppliers, such as Material Safety Data Sheets; ingredient lists and
26 warnings; information obtained from industry and trade groups; information obtained from its
27 consultants and legal counsel; and information obtained from Plaintiff, including the 60-Day
28 Notice of Violations.

1 19. Any person “violating or threatening to violate” Proposition 65 may be enjoined in any
2 court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to violate” is defined
3 to mean “to create a condition in which there is a substantial probability that a violation will
4 occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not to
5 exceed \$2,500 per day for each violation of the statute.

6 20. EcoRights has engaged in good faith efforts to resolve the claims alleged herein prior to
7 filing this complaint.

8 **FIRST CAUSE OF ACTION**

9 **(Violations of Health & Safety Code §25249.6)**

10 21. EcoRights realleges and incorporates the facts and allegations contained in the above
11 paragraphs as though specifically set forth herein.

12 22. That each Defendant is a person in the course of doing business within the meaning of
13 Health & Safety Code § 25249.11(b) who, by manufacturing, marketing, distribution, sale or
14 otherwise placing the Products into the stream of commerce, violated, violates or threatens to
15 violate Proposition 65.

16 23. Styrene is a chemical listed by the State of California as known to cause cancer.

17 24. Defendants have knowledge and intent that typical use of the Products will expose users of
18 the Products to styrene.

19 25. Defendants have failed and continue to fail, to provide clear and reasonable warnings
20 regarding the carcinogenicity of styrene to users of the Products.

21 26. Since August 30, 2018, Defendants have violated Proposition 65 by knowingly and
22 intentionally exposing individuals to styrene without first giving clear and reasonable warnings to
23 such individuals regarding the carcinogenicity of styrene.

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for judgment against Defendants as follows:

26 1. Pursuant to the First Cause of Action, that Defendants be enjoined, restrained, and ordered
27 to comply with the provisions of Section 25249.6 of the California Health & Safety Code;

1 2. That Defendants be ordered to make best efforts to identify and locate each individual in
2 California to whom it, or its customers or agents, distributed or sold Products since August 30, 2018,
3 and to provide a warning to each such person that use of the Product will expose that person to a
4 chemical known to cause cancer;

5 3. That Defendants be assessed a civil penalty in an amount equal to \$2,500.00 per day per
6 individual exposed to styrene in violation of Section 25249.6 of the California Health & Safety
7 Code, as the result of Defendants' marketing, distributing, and/or selling the Products for use in
8 California.

9 4. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to Plaintiff
10 the attorneys' fees and costs it incurred in bringing this enforcement action; and

11 5. For such other relief as this court deems just and proper.

12
13 Dated: November 5, 2021

LAW OFFICES OF BRIAN GAFFNEY APC

Brian Gaffney

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16 Brian Gaffney
17 Attorney for Plaintiff
18 ECOLOGICAL RIGHTS FOUNDATION
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August 30, 2021

Notice of Violations
Safe Drinking Water and Toxic Enforcement Act

By Certified Mail, Return Receipt Requested to Violators in U.S.A.
By Registered Mail to Violators Located Outside U.S.A.
By First Class U.S. Mail to Public Enforcement Agencies

Dear Public Enforcement Agencies / Violators:

This office and Ecological Rights Foundation (“ERF”) gives you notice that, since at least August 30, 2018 the businesses listed on Attachment A and Attachment A have been, and continue to be, in violation of California Health & Safety Code §25249.6. ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals.

ERF intends to bring an enforcement action 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this notice letter. The public enforcement agencies that have been served with copies of this notice of violations are identified on the attached Certificate of Service.

The above referenced violations occur when California residents use 3D pens utilizing filaments incorporating a styrene monomer, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments. Use of 3D pens with the above identified filaments expose people to styrene, a chemical known to the State of California to cause cancer. 3D pens sold by the businesses listed on **Attachment A - 3D Pen Violators** expose consumers and workers to styrene via inhalation.

Examples of particular 3D Pens manufactured, sold, distributed and/or marketed by the violators are attached as **Attachment B - 3D Pens**. All of the 3D Pens at issue in this notice can be used with filaments incorporating a styrene monomer, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments. When people use these 3D pens, the above filaments are heated by the 3D pens and thus release styrene into the air. People using 3D pens utilizing filaments incorporating a styrene monomer, and others in the same room where such 3D pens are being used, inhale styrene in the normal course of use.

In addition, exposures in the environmental context occur in the homes, businesses, schools and public locations where the people use either 3D pens utilizing filaments incorporating a styrene monomer. Exposures to styrene occur within the consumer and environmental contexts.

The businesses listed on **Attachment A - 3D Pen Violators** did not and do not provide clear and reasonable warnings to people who use 3D pens utilizing filaments incorporating a styrene monomer, that use of these products will expose them to chemicals known to cause cancer. The above violations have occurred every day since at least August 30, 2018, and will continue every day until clear and reasonable warnings are given.

The businesses listed on Attachment A - 3D Pen Violators - are responsible for providing the warnings required by Section 25249.6 of the Act for consumer product exposures to people who use 3D pens capable of utilizing filaments incorporating a styrene monomer as the 3D Pen Violators are selling these 3D pens under a brand or trademark that is owned or licensed by the 3D Pen Violators or an affiliated entity; the 3D Pen Violators have actual knowledge of the potential consumer product exposure requiring the warning; there is no manufacturer, producer, packager, importer, supplier, or distributor of the 3D pens who is a “person in the course of doing business” under Section 25249.11(b) of the Act and has designated an agent for service of process in California or has a place of business in California.

Attachment B – 3D Pens is a non-exclusive list of examples of these types of products. Though specific models or product numbers are given as examples, this Notice also pertains to all models and all variations of 3D Pens utilizing filaments incorporating a styrene monomer sold in California. Attachment B is for the recipient’s benefit and is not meant to be an exhaustive or comprehensive identification of each specific offending product. It is ERF’s position that the alleged Violators are obligated to conduct a good faith investigation into other specific products within the identified category or type that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the past three years, to ensure that clear and reasonable warnings are provided to California citizens prior to purchase, or retroactively if necessary.

These violations and threatened violations will continue to occur everyday until these businesses either provide clear and reasonable warnings, reformulate their 3D pens so as not to use filaments incorporating a styrene monomer, or stop selling these 3D pens in California. These violations occur in all of California’s 58 counties, both on and off of these businesses’ properties.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, ERF is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

The following individual is the responsible individual within ERF for purposes of this Notice:
Fredric Evenson
Ecological Rights Foundation
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

ERF has retained the following counsel to represent it in this matter. **Please direct communications to counsel.**

Brian Gaffney
LAW OFFICES OF BRIAN GAFFNEY APC
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187
brian@gaffneylegal.com

Resolution of Noticed Claims:

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. ERF is willing to settle this matter to the extent legally possible prior to the commencement of any enforcement action. Settlement terms would require that the unwarned exposures described in this Notice of Violation be stopped. That would require at least the following: 1) a potential recall of products already sold; 2) that either warnings be given to all future purchasers in California of the products subject to this Notice, that the products be reformulated to eliminate the exposures described in the Notice, or that you stop marketing, distributing or selling the products in California; 3) that you locate and provide a warning compliant with 27 Cal. Code Regs Section 25601 to each person who has been subject to the unwarned exposures described in the Notice to the extent those exposures are caused by products that were sold in California during the past three years; and 4) that you pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). It should be noted that ERF cannot finalize any settlement of this matter until 70 days have elapsed since the sending of the Notice and unless no public enforcer has begun an enforcement action concerning the violations described in the Notice. Any settlement on behalf of the public interest must be approved by the California Superior Court on noticed motion with 45 days' notice to the California Attorney General. The Attorney General may appear at any approval hearing and oppose a settlement if he or she believes the proposed settlement is not in the public interest. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

Sincerely,
/s/Brian Gaffney
Brian Gaffney

Enclosure to Violators "The Safe Drinking Water and Toxic Enforcement Act of 1986: A Summary." A Certificate of Merit is also attached.

Attachment A – 3D Pen Violators

Walmart Inc.

Attachment B – 3D Pens

<u>Proposition 65 Violators -3D Pens</u>	<u>Examples of Products Manufactured, Sold, Distributed and/or Marketed</u>
Walmart Inc.	ALLCACA 3D Pen (UPC 191557337609)
Walmart Inc.	ANSELF 3D Pen (UPC 791327910096)
Walmart Inc.	Basstop 3D Pen (UPC 780682499650) Walmart #574335594;Manufacturer Part ID: BIPP3D
Walmart Inc.	Bisontec 3D Pen (UPC 661094592897)
Walmart Inc.	Galaxy Wireless 3D Pen (SKU 2802680492917)
Walmart Inc.	General 3D Pen (UPC 191557337562)
Walmart Inc.	HC-TOP 3D Pen (UPC 940214354356)
Walmart Inc.	HOTBEST 3D Pen (UPC 605750409624)
Walmart Inc.	IKEEPI 3D Pen (SKU: CK000 AD010101 3388049)
Walmart Inc.	mascarry 3D Pen (UPC 780682513721) (SKU: SYXQ410AB)
Walmart Inc.	METERK 3D Pen (UPC 791351247434) (SKU "TLUSE3974-FBA(E3974US)*150 B07DC25SHK)
Walmart Inc.	Myriann 3D Pen (UPC 762409324193)
Walmart Inc.	ODOMY 3D Pen (UPC 605750518241)
Walmart Inc.	SelfNew 3D Pen (UPC 600358556114)
Walmart Inc.	VicTsing 3D Pen (UPC 796826609717)
Walmart Inc.	V.I.P. 3D Pen 3D Pen 3D Drawing Printing Printer Pen with Free Filament Refills (SKU: CK000 AD010101 3388049)
Walmart Inc.	V.I.P. 3D Pen 3D Pen 3D Drawing Printing Printer Pen with Free Filament Refills (SKU: CK000 AD010101 3388049)
Walmart Inc.	WODSTYLE 3D Pen (SKU: FH030210101 PAO200721228)

Certificate of Merit - Health & Safety Code Section 25249.7(d)

I, Brian Gaffney, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have 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 one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the 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 plaintiff's 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 certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: August 30, 2021

By:
/S/Brian Gaffney
Brian Gaffney

27 CCR Appendix A
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. Please refer to the statute and OEHHA's 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. 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 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 say 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 Periods. 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 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.

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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual **California** Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Page 1

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating **California Health and Safety Code §25249.6** (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under **California Health and Safety Code §25249.6** if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

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Date :

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with **California Health and Safety Code §25249.6** for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving

this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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.

CERTIFICATE OF SERVICE

I, Brian Gaffney, declare:

If so called, I could and would testify as follows: I am over eighteen. My business address is 446 Old County Road, Suite 100-310, Pacifica, CA 94044.

On August 30, 2021, I caused the attached

(1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act, (2) Certificate of Merit: Health and Safety Code Section 25249.7(d), (3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary, (4) Certificate of Service to be served by CERTIFIED MAIL to each private business entity listed on the attached SERVICE LIST-Noticed Parties, except for each private business located outside of the U.S.A. which are served by REGISTERED MAIL. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected.

In addition, on the same date and I caused the attached

(1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act, (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 the Attorney General), (4) Certificate of Service by FIRST CLASS U.S. MAIL on those public enforcement agencies listed on the attached SERVICE LIST-Public Enforcers. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected, and

by sending portable document format (PDF) files of the same to the electronic mail addresses to each of the public prosecutors identified by the California Attorney General as having authorized electronic service of notices. These public enforcement agencies appear on the attached Service List with their electronic mail addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 30, 2021, at Pacifica, California.

/S/Brian Gaffney
Brian Gaffney

SERVICE LIST-Public Enforcers

Alameda District Attorney
7776 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

Amador County District Attorney
708 Court Street, #202
Jackson, CA 95642

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

Calaveras District Attorney
891 Mountain Ranch Rd.
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Colusa County District Attorney
346 5th Street, Suite 101
Colusa, CA 95932

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

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

El Dorado County District Attorney
778 Pacific Street
Placerville, CA 95667

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

Glenn County District Attorney
P.O. Box 430
Willows, CA 95988

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

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

Inyo District Attorney
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Kern County District Attorney
1215 Truxtun Avenue
Bakersfield, CA 93301

Kings County District Attorney
1400 West Lacey Blvd.
Hanford, CA 93230

Lake County District Attorney
255 N. Forbes Street
Lakeport, CA 95453

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

Los Angeles County District Attorney
211 W. Temple Street, Suite 1200
Los Angeles, CA 90012

City Attorney
City of Los Angeles
200 N. Main Street, Suite 800
Los Angeles, CA 90012

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

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

Mariposa District Attorney
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Mendocino County District Attorney
P.O. Box 1000
Ukiah, CA 95482

Merced District Attorney
550 West Main Street
Merced, CA 95340
Prop65@countyofmerced.com

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

Mono County District Attorney
P.O. Box 617
Bridgeport, CA 93517

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

Napa District Attorney
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

Nevada District Attorney
201 Commercial Street
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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

Oakland City Attorney
City Hall, 6th Floor
1 Frank Ogawa Plaza
Oakland, California 94612

Placer District Attorney
10810 Justice Center Drive
Roseville, CA 95678
prop65@placer.ca.gov

Plumas District Attorney
520 Main St.
Quincy, CA 95971
davidhollister@countyofplumas.com

Riverside District Attorney
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Sacramento District Attorney
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Sacramento City Attorney
915 I Street, 4th Floor
Sacramento, CA 95814

San Benito County District Attorney
419 4th Street
Hollister, CA 95023

San Bernardino Co. District Attorney
303 W. Third Street
San Bernardino, CA 92415

San Diego District Attorney
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcdca.org

San Diego Deputy City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

San Francisco Deputy City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

San Francisco Assistant District Attorney
350 Rhode Island Street
San Francisco, CA 94103
alethea.sargent@sfgov.org

San Joaquin District Attorney
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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

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

San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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

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

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

Shasta County District Attorney
1355 West Street
Redding, CA 96001

Sierra County District Attorney
P.O. Box 457
Downieville, CA 95936

Siskiyou County District Attorney
P.O. Box 986
Yreka, CA 96097

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

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

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

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

Tehama County District Attorney
P.O. Box 519
Red Bluff, CA 96080

Trinity County District Attorney
P.O. Box 310
Weaverville, CA 96093

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

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

Ventura District Attorney
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Yolo District Attorney
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

Yuba County District Attorney
215 Fifth Street, Suite 152
Marysville, CA 95901

California Attorney General
<https://oag.ca.gov/prop65/add-60-day-notice>

Service List – Noticed Violators

Walmart Inc.
ATTN: President/CEO
702 SW 8th Street
Bentonville, AR 72716