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8 Attorney for Plaintiff Friends of Safe Playing Fields

Electronically  
**FILED**  
1/27/2023  
by Superior Court of the County of San Mateo  
ON  
By /s/ Jennifer Torres  
Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN MATEO**

11 **FRIENDS OF SAFE PLAYING FIELDS, an**  
12 **unincorporated association**

13 **Plaintiff,**

14 vs.

15 **THE IGNATIAN CORPORATION**  
16 **individually and dba ST. IGNATIUS**  
17 **COLLEGE PREPARATORY and DOES 1-**  
18 **100**

19 **Defendants.**

20 **CASE NO. 23-CIV-00421**

21 **COMPLAINT FOR INJUNCTIVE**  
22 **AND DECLARATORY RELIEF AND**  
23 **CIVIL PENALTIES**

24 [Miscellaneous Civil Complaint (42)]  
25 Proposition 65, Health & Safety Code  
26 Section 25249.5 et seq.]

27 Plaintiff Friends of Safe Playing Fields ("FRIENDS") hereby alleges:

28 **I**

**INTRODUCTION**

1. Plaintiff Friends of Safe Playing Fields (hereinafter "Plaintiff" or "FRIENDS") brings this action as a private attorney general enforcer and in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as "Proposition 65," mandates that businesses with ten or more employees must provide a "clear and reasonable

1 warning” prior to exposing any individual to a chemical known to the state to cause cancer or  
2 reproductive toxicity. Lead is a chemical known to the State of California to cause cancer, birth  
3 defects, and other reproductive harm. This Complaint seeks injunctive and declaratory relief  
4 and civil penalties to remedy the ongoing failure of Defendants The Ignatian Corporation  
5 individually and dba St. Ignatious College Preparatory and Does 1-100 (hereinafter referred to  
6 as “Defendants”) to warn student athletes and other persons who come into contact with the turf  
7 at the Fairmont Field in Pacifica, California, that they have been exposed to lead at levels  
8 exceeding the applicable Maximum Allowable Dose Level (“MADL”) for the chemical and  
9 requiring a warning pursuant to Health & Safety Code section 25249.6.

## 10 II

### 11 PARTIES

12 2. Plaintiff FRIENDS is an unincorporated association of neighbors living in Pacifica,  
13 California dedicated to safeguarding student athletes and other persons who come into contact  
14 with the turf at the Fairmont Field from the health hazards associated with exposure to toxic  
15 chemicals, especially lead.

16 3. Defendant The Ignatian Corporation is a California corporation doing business as  
17 St. Ignatious College Preparatory. Defendants are businesses subject to Proposition 65 as they  
18 employ ten or more persons and have employed ten or more persons at all times relevant to this  
19 action.

20 4. Defendants Does 1-100, are named herein under fictitious names, as their true names  
21 and capacities are unknown to FRIENDS. FRIENDS is informed and believes, and thereon  
22 alleges, that each of said Does is responsible, in some actionable manner, for the events and  
23 happenings hereinafter referred to, either through said Does’ conduct, or through the conduct of  
24 its agents, servants or employees, or in some other manner, causing the harms alleged by  
25 FRIENDS in this Complaint. When said true names and capacities of Does are ascertained,  
26 FRIENDS will seek leave to amend this Complaint to set forth the same.

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**III**

**JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. The statute under which this action is brought does not specify any other basis for jurisdiction.

6. This Court has jurisdiction over Defendants because they conduct business operations in California, that creates sufficient minimum contacts with the State so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

7. The Complaint is based on allegations contained in the Notice of Violation dated January 25, 2022, served on the California Attorney General, the San Mateo County District Attorney and Defendants. The Notice of Violation constitutes sufficient notice to Defendants because the Notice of Violation provided adequate information to allow Defendants to assess the nature of the alleged violations, consistent with Proposition 65 and its implementing regulations. A certificate of merit and a certificate of service accompanied each copy of the Notice of Violation, and both certificates comply with Proposition 65 and its implementing regulations. The Notice of Violation served on Defendants also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." Service of the Notices of Violation and accompanying documents complied with Proposition 65 and its implementing regulations. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of Violation and associated documents. More than 60 days have passed since FRIENDS mailed the Notice of Violation and no public enforcement entity has filed a Complaint in this case.

8. This Court is the proper venue for the action because the causes of action have arisen in the County of San Mateo where the violations of law have occurred, and will continue to occur, unless the Defendants take appropriate actions to comply with State law. Furthermore, venue is proper in this Court under Code of Civil Procedure section 395.5 and Health & Safety Code

1 section 25249.7.

2 IV

3 **STATUTORY BACKGROUND**

4 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
5 passed as “Proposition 65” by an overwhelming majority vote of the people in November of  
6 1986.

7 10. The warning requirement of Proposition 65 is contained in Health & Safety Code  
8 section 25249.6, which provides:

9 No person in the course of doing business shall knowingly and  
10 intentionally expose any individual to a chemical known to the state to  
11 cause cancer or reproductive toxicity without first giving clear and  
12 reasonable warning to such individual, except as provided in Section  
13 25249.10.

14 11. The Office of Environmental Health Hazard Assessment (“OEHHA”), a division of Cal  
15 EPA, is the lead agency in charge of the implementation of Proposition 65. OEHHA  
16 administers the Proposition 65 program and administers regulations that govern Proposition 65  
17 in general, including warnings to comply with the statute. The warning regulations are found at  
18 Title 27 of the California Code of Regulations, Article 6. The regulations define expose as “to  
19 cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed  
20 chemical. An individual may come into contact with a listed chemical through water, air, food,  
21 consumer products and any other environmental exposure as well as occupational exposures.”  
(Cal. Code Regs., tit. 27, § 25102, subd. (i).)

22 12. In this case, the exposures are environmental exposures. An environmental exposure is  
23 “an exposure that occurs as the result of contact with an environmental source, such as ambient  
24 air, indoor air, ... through inhalation, ingestion, or skin or other contact with the body. All  
25 exposures that are not consumer product exposures or occupational exposures are  
26 environmental exposures.” (Cal. Code Regs. tit. 27, § 25600.1, subd. (f).)

27 13. On August 30, 2016, the Office of Administrative Law approved the adoption of  
28 OEHHA’s amendments to Article 6, Clear and Reasonable Warnings of the California Code of

1 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the  
2 California Code of Regulations, Article 6 (sections 25601 *et seq.*) and replaced the repealed  
3 sections with new regulations set forth in two new Subarticles to Article 6 that became  
4 operative on August 30, 2018 (the “New Warning Regulations”). The New Warning  
5 Regulations provide, among other things, methods of transmission and content of warnings  
6 deemed to comply with Proposition 65. Defendants are subject to the warning requirements set  
7 forth in the New Warning Regulations that became operative on August 30, 2018.

8 14. Health & Safety Code section 25249.6 provides that “No person in the course of doing  
9 business shall knowingly and intentionally expose any individual to a chemical known to the  
10 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning  
11 to such individual . . . .” The New Warning Regulations apply when clear and reasonable  
12 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,  
13 environmental exposure warnings “must be provided in a conspicuous manner and under such  
14 conditions as to make the warning likely to be seen, read, and understood by an ordinary  
15 individual in the course of normal daily activity.” (Cal. Code Regs. tit. 27, § 25601, subd. (d).)  
16 Based on the environmental issue at issue, the method of warning should be one or more of the  
17 methods required in the California Code of Regulations, title 27, Section 25604. The method of  
18 warning should be warning signs posted at conspicuous locations at Fairmont Field in no  
19 smaller than 72-point type. The warning signs must clearly state that the source of the exposure  
20 is the turf; be provided in a conspicuous manner and under such conditions as to make it likely  
21 to be seen, read and understood by an ordinary individual in the course of normal daily activity;  
22 be provided in English and in any other language used on other signage in the affected area. *Id.*  
23 at Section 25604, subd. (a) (1) (A) - (C). The warning signs must also comply with the content  
24 provisions set forth at 27 CCR Section 25605.

25 15. Proposition 65 establishes a procedure by which the State is to develop a list of  
26 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,  
27 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after  
28 the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

1 16. Lead was listed as a chemical known to the State of California to cause developmental  
2 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was  
3 listed as a chemical known to the State of California to cause cancer on October 1, 1992. (State  
4 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986  
5 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL for  
6 lead as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal. Code  
7 Regs., tit. 27, § 25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is 15  
8 micrograms per day. (Cal. Code Regs., tit. 27, 25705, subd. (b).)

9 17. Proposition 65 provides that any person “violating or threatening to violate” Proposition  
10 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,  
11 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial  
12 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)  
13 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.  
14 (Health & Safety Code, § 25249.7, subd. (b)(1).)

15 18. Proposition 65 may be enforced by any person in the public interest who provides notice  
16 sixty days before filing suit to both the violator and designated law enforcement officials. The  
17 failure of law enforcement officials to file a timely Complaint enables a citizen suit to be filed  
18 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

19 V

20 **STATEMENT OF FACTS**

21 19. The turf at the Fairmont Field is comprised of fake green grass blades with tire crumb  
22 turf containing toxic substances including lead. The field is located at 290 Edgewood Drive,  
23 Pacifica, California 94044. Students and other persons participating in activities associated with  
24 the field are being exposed to lead under ordinary conditions of use. Exposure of lead to  
25 persons engaged in activities at the Fairmont Field is likely to occur through dermal contact, and  
26 ingestion through hand to mouth and inhalation. Exposure to lead occurs in a multitude of ways  
27 including but not limited to contact with the skin, hair, clothing and shoes and can transmitted  
28 into cars, homes, and other places as well as on to other individuals. There are no signs at the

1 field for persons exposed to lead to wash their hands, face, clothing and shoes immediately after  
2 playing on the tire crumb turf field. For many years, there have been no sinks with running  
3 water at Fairmont Field, thereby creating an unsafe environment for those persons exposed to  
4 lead. The field is often used daily and on Saturdays and Sundays there are approximately 150  
5 individuals participating in a variety of sports on the field at the same time as well as coaches,  
6 spectators and players having contact with the turf at Fairmont Field for many hours during the  
7 day.

8 20. For many years, Defendants have knowingly and intentionally exposed numerous  
9 persons to lead without providing any type of Proposition 65 warning. For many years prior to  
10 FRIENDS's Notice of Violation and this Complaint, Defendants failed to provide a warning to  
11 student athletes of St. Ignatius College Preparatory involved in soccer, field hockey, lacrosse,  
12 softball, baseball and other sports or school activities, as well as teachers, coaches,  
13 groundskeepers, referees/umpires and other persons engaged in activities on the turf at Fairmont  
14 Field. Defendants have always been aware that the field is composed of fake green grass  
15 blades with tire crumb turf containing lead and that student athletes in various sports and others  
16 use the field regularly. Despite this knowledge, Defendants have failed to disclose the presence  
17 of lead to numerous persons who continue to be exposed to the chemical during the regular  
18 course of use of the turf field. Defendants have been aware that there are safer playing surfaces  
19 that contain no lead or substantially less lead than the turf at Fairmont Field and have failed to  
20 take all appropriate measures to eliminate/and or reduce this exposure.

21 21. Both prior and subsequent to FRIENDS's Notice of Violation, Defendants failed to  
22 provide student athletes of St. Ignatius College Preparatory involved in soccer, field hockey,  
23 lacrosse, softball, baseball and other sports or school activities, as well as teachers, coaches,  
24 groundskeepers, referees/umpires and other persons engaged in activities on the turf at Fairmont  
25 Field with a clear and reasonable warning that they have been exposed to a chemical known to  
26 the State of California to cause cancer, birth defects and other reproductive harm. This failure to  
27 warn is ongoing.

28 /// /// ///

1 **FIRST CAUSE OF ACTION**  
2 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and**  
3 **Reasonable Warning under Proposition 65)**

4 22. FRIENDS refers to paragraphs 1-21, inclusive, and incorporates them herein by this  
5 reference.

6 23. By committing the acts alleged above, Defendants have, in the course of doing business,  
7 knowingly and intentionally exposed students and other people who participate in activities  
8 associated with the Fairmont Field to a chemical known to the State of California to cause  
9 cancer, birth defects, and other reproductive harm, without first giving clear and reasonable  
10 warning to such individuals within the meaning of Health & Safety Code section 25249.6. In  
11 doing so, Defendants have violated Health & Safety Code section 25249.6 and have continued  
12 to violate the statute with each successive person exposed on a daily basis.

13 24. Said violations render Defendants liable for civil penalties, up to \$2,500 per day for each  
14 violation, and subject Defendants to injunction.

15 **SECOND CAUSE OF ACTION**  
16 **(Declaratory Relief)**

17 25. FRIENDS refer to paragraphs 1-24, inclusive, and incorporates them herein by this  
18 reference.

19 26. There exists an actual controversy relating to the legal rights and duties of the Parties,  
20 within the meaning of Code of Civil Procedure section 1060, between FRIENDS and  
21 Defendants, concerning whether Defendants have exposed individuals to a chemical known to  
22 the State of California to cause cancer, birth defects, and other reproductive harm without  
23 providing clear and reasonable warning.

24 **VI**

25 **PRAYER**

26 WHEREFORE FRIENDS prays for relief as follows:

27 1. On the First Cause of Action, for civil penalties for each and every violation according  
28 to proof;

1        2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,  
2 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive  
3 orders that the Fairmont Field cannot continue to operate without providing clear and  
4 reasonable warning or other orders as are necessary to prevent Defendants from exposing  
5 persons to lead without providing clear and reasonable warning;

6        3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
7 Procedure section 1060 declaring that Fairmont Field is toxic turf field containing lead that has  
8 exposed individuals to the chemical without providing clear and reasonable warning;

9        4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil  
10 Procedure section 1021.5 or the substantial benefit theory;

11        5. For costs of suit herein; and

12        4. For such other relief as the Court may deem just and proper.

13  
14  
15 DATED: January 26, 2023

MICHAEL FREUND & ASSOCIATES



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Michael Freund  
Attorney for Plaintiff Friends of Safe Playing Fields

EXHIBIT A

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January 25, 2022

Xavier Becerra  
California Attorney General  
1515 Clay Street, Suite 2000  
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Stephen M. Wagstaffe  
San Mateo County District Attorney  
400 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063

Ken Stupi, Registered Agent  
The Ignatian Corporation dba St. Ignatius College Preparatory  
2001 37<sup>th</sup> Ave.  
San Francisco, CA 94116-1165

**Re: Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Sections 25249.5 et seq. ("Proposition 65")**

Dear Alleged Violators and the Appropriate Proposition 65 Public Enforcement Agencies:

I represent Friends of Safe Playing Fields, ("Friends") an association of neighbors who are concerned that student athletes and other persons who come into contact with the turf at the Fairmont Field located at 260 Edgewood Drive, Pacifica, California 94044 are being exposed to lead, a very dangerous heavy metal without any knowledge. Friends main contact is Steve Aronovsky. Tel.: 650-266-8200; email [llonemoretime77@yahoo.com](mailto:llonemoretime77@yahoo.com). This letter constitutes notification that the Ignatian Corporation, dba St. Ignatius College Preparatory has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act which is codified at Health & Safety Code § 25249.5 et seq.

Friends has identified violations of Proposition 65 from the alleged Violators identified herein. The alleged Violators possess, own or otherwise control the Fairmont Field in Pacifica, California which is used primarily by students of St. Ignatius College Preparatory for soccer, baseball and other sports or school activities. The field is comprised of fake green grass blades with tire crumb turf that contain lead. The alleged Violators have exposed and continue to expose students and other persons engaged in activities on the Fairmont Field to this chemical including but not limited to teachers, coaches, groundskeepers and referees/umpires without providing a clear and reasonable warning to these individuals. This letter serves as a notice of

these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7, subdivision (d), Friends intends to file a private enforcement action in the public interest 60 days after effective service of this Notice of Violation unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information About Proposition 65:** A copy of a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators.

**Alleged Violators:** The names of the companies covered by this Notice of Violation that violated Proposition 65 are:

**The Ignatian Corporation dba St. Ignatius College Preparatory**

**Information Pertaining to Lead and Proposition 65:** On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

**General Geographic Location of the Unlawful Exposure and Route of Exposure:** The location of the unlawful exposure initially takes place at the Fairmont Field located at 290 Edgewood Drive, Pacifica, California 94044.

The exposures that are the subject of this Notice of Violation occur through dermal contact, inhalation and ingestion.

**Approximate Time Period of Violations:** Ongoing violations have occurred each day during the ordinary course of business operations since at least January 25, 2019 and will continue every day until clear and reasonable warnings are provided to those persons exposed to lead or until the turf at Fairmont Field is replaced with natural grass.

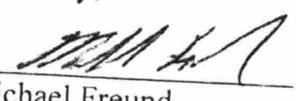
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. Based on the environmental exposure at issue, the method of warning should be one or more of the methods required in the California Code of Regulations ("CCR"), title 27, Section 25604. The method of warning should be a warning sign posted at all public entrances to Fairmont Field in no smaller than 72-point type. The warning sign must clearly state that the source of the exposure is the turf; be provided in a conspicuous manner and under such conditions as to make it likely to be seen, read and understood by an ordinary individual in the course of normal daily activity; be provided in English and in any other language used on other signage in the affected area. *Id.* at Section 25604, subdivision (a) (1) (A)-(C). The warning sign must also comply with the provisions set forth at 27 CCR Section 25605.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Friends is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the

alleged Violators to (1) take immediate action to replace the toxic turf with natural grass so as to eliminate further exposures to students and others to this dangerous chemical; 2) provide clear and reasonable warnings compliant with Proposition 65 to those students and others who both currently come into contact with the turf field and have come into contact with the turf field and were exposed to lead during the last three years; and 3) pay an appropriate civil penalty. Such a resolution will prevent further unwarranted exposures to the identified chemical, as well as expensive and time-consuming litigation.

Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [freund1@aol.com](mailto:freund1@aol.com).

Sincerely,



Michael Freund  
Attorney for Friends of Safe Playing Fields

Attachments: Certificate of Merit, Certificate of Service, OEHHA Summary (to Violators only), and Additional Supporting Information for Certificate of Merit (to Attorney General only)

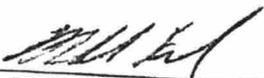
**CERTIFICATE OF MERIT**

**Re: Friends of Safe Playing Fields Notice of Proposition 65 Violation**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the Notice of Violation violated California Health & 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 have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice of Violation.
4. Based on the information obtained through this consultation, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not provide that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code 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 the individual.

Dated: January 25, 2022

  
Michael Freund

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, CA 94704.

On January 24, 2022 I served the following documents: Notice of Violation of California Health & Safety Code § 25249.5 et seq; Certificate of Merit; and 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" on the following party by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, at a United States Postal Service Office in Berkeley, California for delivery by Certified Mail and via electronic mail addressed as follows:

Ken Stupi, Registered Agent  
The Ignatian Corporation dba St. Ignatious College Preparatory  
2001 37<sup>th</sup> Ave.  
San Francisco, CA 94116-1165

On January 24, 2022, I served the following documents: Notice of Violation of California Health & Safety Code § 25249.5 et seq; Certificate of Merit; and Additional Supporting Information for Certificate of Merit by uploading to the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

California Attorney General/Proposition 65 Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

On January 24, 2022, I served the following documents: Notice of Violation of California Health & Safety Code § 25249.5 et seq; and Certificate of Merit by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, at a United States Postal Service Office in Berkeley, California for delivery by Certified Mail addressed as follows:

Stephen M. Wagstaffe  
San Mateo County District Attorney  
400 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063

I, Michael Freund declare under penalty of perjury that the foregoing is true and correct. Executed on  
January 25, 2022 at Berkeley, California.



\_\_\_\_\_  
Michael Freund