

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**03/18/2024 at 02:49:12 PM**

By: Damaree Franklin,  
Deputy Clerk

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA

13 AS YOU SOW, a 501(c)(3) non-profit  
14 corporation,

15 Plaintiff,

16 v.

17 ETSY, INC.,

18 Defendant.

Case No. 24CV068179

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES AND OTHER  
EQUITABLE RELIEF FOR VIOLATIONS  
OF PROPOSITION 65 (HEALTH & SAF.  
CODE, § 25249.6 et seq.)**



1 **Parties**

2 6. Plaintiff AS YOU SOW is a 501(c)(3) non-profit corporation dedicated to, among  
3 other causes, the protection of the environment, toxics reduction, the promotion and improvement of  
4 human health, and the improvement of worker and consumer rights. AS YOU SOW has, since 1992,  
5 been one of the leading enforcers of Proposition 65, bringing hundreds of manufacturers and whole  
6 industries into compliance as part of its work to promote corporate accountability, ensure safer  
7 consumer products, and create a sustainable marketplace that does not degrade the planet. AS YOU  
8 SOW brings this action as a private attorney general in the public interest pursuant to Health & Safety  
9 Code section 25249.7, subdivision (d).

10 7. Defendant ETSY, INC. is a business entity with ten or more employees doing business  
11 within the scope of Proposition 65. (Health & Saf. Code, § 25249.11.)

12 **Statutory And Regulatory Background**

13 8. Overwhelmingly enacted by the voters of California in 1986 as “Proposition 65,” the  
14 Safe Drinking Water and Toxic Enforcement Act “is a remedial statute intended to protect the public.”  
15 (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal. 4th 294, 314.)

16 9. Proposition 65 declared the People’s right to be “informed about exposures to  
17 chemicals that cause cancer, birth defects, or other reproductive harm.” (Health & Saf. Code Div. 20,  
18 Ch. 6.6 Note, § 1, subd. (b).)

19 10. Under Proposition 65:

20 No person in the course of doing business shall knowingly and intentionally expose  
21 any individual to a chemical known to the state to cause cancer or reproductive  
22 toxicity without first giving clear and reasonable warning to such individual, except  
as provided in section 25249.10.

23 (Health & Saf. Code, § 25249.6.)

24 11. A “person in the course of doing business” does not include any person employing  
25 fewer than 10 employees in his or her business; any city, county, or district or any department or  
26 agency thereof or the state or any department or agency thereof or the federal government or any  
27

1 department or agency thereof; or any entity in its operation of a public water system as defined in  
2 Section 116275. (Health & Saf. Code, § 25249.11, subd. (b).)

3 12. An exposure to a listed chemical contained in a consumer product “results from a  
4 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
5 consumer good, or any exposure that results from receiving a consumer service.” (27 Cal. Code Regs.,  
6 § 25602 subd. (b).)

7 13. A “knowingly” exposure occurs where the party responsible for such exposure has:  
8 knowledge of the fact that a discharge of, release of, or exposure to a chemical listed  
9 pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the  
10 discharge, release or exposure is unlawful is required.

(27 Cal. Code Regs., § 25102, subd. (n).)

11 14. Neither Proposition 65 nor the regulations use the phrase “constructive knowledge” or  
12 language commonly associated with the concept, such as “should know” or “reason to know.”  
13 Similarly, Proposition 65 nor the regulations applicable to this case use the phrase “actual knowledge”  
14 as well. *See Lee v. Amazon, Inc.*, 76 Cal.App.5th 200 (2002). Further, it has been found that there are  
15 circumstances in which constructive knowledge is sufficient to require provision of a warning. (*Id.*)

16 15. According to the Office of Environmental Health Hazard Assessment (OEHHA), a  
17 warning meets the “clear and reasonable” requirements of Proposition 65 only if it includes: (1) a  
18 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black  
19 outline<sup>1</sup>; (2) the symbol shall be placed to the left of the text of the warning, in a size no smaller than  
20 the height of the word “WARNING”; (3) the word “WARNING:” in all capital letters and bold print;  
21 and (4) the words, “This product can expose you to chemicals including [name of one or more  
22 chemicals], which is [are] known to the State of California to cause [cancer, birth defects or other  
23 reproductive harm or cancer and birth defects or other reproductive harm].” (27 Cal. Code Regs., §  
24

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25 <sup>1</sup> Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black  
26 and white.

1 25603, subd. (a).) Where a warning is being provided for an exposure to a single chemical the words  
2 “chemicals including” may be deleted from the warning content. (*Id.*)

3 16. For internet purchases, the warning may be provided by including a clearly marked  
4 hyperlink using the word “**WARNING**” on the product display page, or by “otherwise prominently  
5 displaying the warning to the purchaser prior to completing the purchase.” (27 Cal. Code Regs.,  
6 § 25602, subd. (b).) “For purposes of this subarticle, a warning is not prominently displayed if the  
7 purchaser must search for it in the general content of the website.” (*Id.*)

8 17. Where a sign or label used to provide consumer information about a product is in a  
9 language other than English, “the warning must also be provided in that language in addition to  
10 English.” (27 Cal. Code Regs., § 25602, subd. (d).)

11 18. Through its strong notice provisions, Proposition 65 helps to protect California’s  
12 drinking water sources from contamination; allows consumers to make informed choices about the  
13 products they buy; and gives Californians the tools they need to protect themselves from exposure to  
14 toxic chemicals.

15 19. Proposition 65 provides that any person who “violates or threatens to violate” the  
16 statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)  
17 “Threaten to violate” is defined to mean “to create a condition in which there is a substantial  
18 probability that a violation will occur.” (*Id.* at § 25249.11, subd. (e).)

19 20. In addition, any person who violates Proposition 65 is liable for civil penalties not to  
20 exceed \$2,500 per day for each violation, recoverable in a civil action. (Health & Saf. Code,  
21 § 25249.7, subd. (b).)

22 21. Private parties are entitled to bring an action in the public interest to enforce  
23 Proposition 65 under Health and Safety Code, section 25249.7, subdivision (d).

**General Allegations of Fact**

**A. Defendant operates www.etsy.com in the course of doing business.**

22. Defendant is a “person in the course of doing business” as that term is defined at Health and Safety Code section 25249.11, subdivision (a). (*Lee v. Amazon, Inc.*, 76 Cal.App.5th 200, 249 (2022).)

23. Defendant owns and operates a global marketplace located at the website www.etsy.com

24. Defendant’s online platform facilitates the sale of products by third parties to end-users or online customers. In 2023, this platform was used by over 6 million sellers and 91 million buyers.

25. Defendant posted a consolidated gross merchandise sales of \$32 billion in fiscal year 2023 with market presence on multiple continents, including Asia, Europe, and the Americas.

26. Defendant provides some level of business service for each product sold through its website, including the skin lightening products at issue in this case.

27. In exchange for the following services, Defendant earns fixed fees, a percentage of sales, per-unit activity fees, interest, or some combination thereof from each of the approximately 6 million third party sellers utilizing www.etsy.com:

- a) Defendant attracts customers to the web site and advertises items across the web through offsite advertisements.
- b) Defendant assists third parties with the creation and management of their shops and products.
- c) Defendant offers Etsy Purchase Protection for buyers, providing reimbursement to buyers for products not received or not received timely, product received as damaged, and products not matching the listing description and photos.
- d) Defendant has the authority to moderate seller content, which includes listings, messages, reviews, images, videos, and all other posted content posted. ETSY, INC. retains the right to employ enforcement mechanisms on an account when its policies are not followed.

1 e) Defendant has the ability to hold seller funds, deactivate a listing, restrict a listing from  
2 some or all members, or suspend an account.

3 28. Third party sellers would not have the ability to reach Defendant's billions of  
4 customers, including those in California, without access to the Defendant's marketplace at  
5 www.etsy.com, and Defendant would not have as many business opportunities or as high profit  
6 margins absent its partnership with third party sellers.

7 29. Defendant does not give customers, or private enforcers, access to the legal name,  
8 physical address, or contact information for third party sellers through online platform.

9 **B. Exposure to mercury or mercury compounds is reasonably foreseeable.**

10 30. On July 1, 1990, OEHHA identified and listed "mercury and mercury compounds" as  
11 chemicals known to the State of California to cause developmental toxicity, pursuant to Proposition  
12 65. Mercury and mercury compounds became subject to Proposition 65's "clear and reasonable  
13 warning" requirement one year later on July 1, 1991. (Health & Saf. Code, §§ 25249.8, 25249.10,  
14 subd. (b); 27 Cal. Code Regs., § 27001, subd. (c).)

15 31. Mercury is broadly known to be an intentionally added ingredient in products claiming  
16 skin lightening qualities.

17 32. Mercury is an effective skin lightener because it penetrates deep into the skin where it  
18 interacts with cells known as melanocytes, which produce the pigment known as melanin, a chemical  
19 that darkens the skin. Mercury replaces a critical enzyme in melanocyte cells, which shuts off the  
20 production of melanin and causes the skin to lighten. Mercury is also a well-known, effective anti-  
21 bacterial for the treatment of acne.

22 33. Generally, mercury exists in three forms: elemental mercury, inorganic mercury  
23 compounds, and organic mercury. Mercury is toxic to humans in all forms. The most commonly used  
24 active ingredient in skin lightening creams is inorganic mercury because it can be absorbed into the  
25 cream readily and easily.

1           34. Californians acquire, purchase, store, consume, use, and/or dispose of skin lightening  
2 creams containing mercury from third party sellers who operate product pages at www.etsy.com.

3           35. Reasonably foreseeable use of skin lightening creams containing mercury causes those  
4 Californians and their household members to be exposed to mercury and mercury compounds in three  
5 main routes: ingestion, inhalation, or dermal absorption.

6           36. Ingestion occurs post-application as a result of normal hand-to-mouth behavior, such as  
7 eating or preparing food.

8           37. Inhalation occurs when mercury vapor off-gasses from the creams.

9           38. Dermal absorption occurs with each reasonably foreseeable application of a skin  
10 lightening cream to the user's skin. Skin lightening creams that contain mercury are designed and  
11 specifically marketed for direct contact with skin.

12           39. Exposure to a cream user's household members is foreseeable because use of the  
13 product results in contamination of household air and surfaces, and household members come into  
14 direct contact with the skin of the primary user of the cream.

15           40. Because Californians purchase skin lightening creams containing mercury through the  
16 Etsy web site throughout California, exposures to mercury occur and continue to occur in residences  
17 where the products are used and in locations in which the products are disposed, including on property  
18 not owned or controlled by Defendant.

19           41. Each reasonably foreseeable use of skin lightening creams containing mercury—  
20 whether by ingestion, inhalation, or dermal absorption—results in continuing and ongoing exposure to  
21 mercury or mercury compounds because mercury has a half-life in the body of two months, and of  
22 decades in the brain.

23           42. Since 1973, the Food and Drug Administration has warned against the use of mercury  
24 in cosmetics, due to ease of exposure and bioaccumulation:

25           It is well known that mercury compounds are readily absorbed through the unbroken  
26 skin as well as through the lungs by inhalation and by intestinal absorption after  
27 ingestion. Mercury is absorbed from topical application and is accumulated in the  
28 body, giving rise to numerous adverse effects. ... Cosmetic preparations containing



1 mercury compounds are often applied with regularity and frequency for prolonged  
2 periods. Such chronic use of mercury-containing skin-bleaching preparations has  
3 resulted in the accumulation of mercury in the body and the occurrence of severe  
4 reactions.

(21 C.F.R. § 700.13(b).)

5 43. The California Department of Public Health recommends that when someone has a  
6 skin lightening cream they believe contains mercury, that person should immediately dispose of the  
7 cream at a household hazardous waste facility.

8 **C. Defendant knowingly and intentionally exposed and continues to expose Californians to  
9 skin lightening creams that contain mercury or mercury compounds.**

10 44. Beginning at least in 2014 and continuing to present, Defendant ETSY, INC. has  
11 permitted third parties access to its online marketplace in order to sell skin lightening, whitening, and  
12 “smoothing” creams containing mercury or mercury compounds (“PRODUCTS”), and specifically  
13 including those listed below in Table 1.

14 45. Defendant knows that the PRODUCTS were sold to consumers in California.

15 46. Customers who purchase skin lightening creams from www.etsy.com are presumed to  
16 have used them. (*Lee v. Amazon.com, Inc.* (2022) 76 Cal.App.5th 200, 250.)

17 47. Each of the PRODUCTS listed in Table 1 is a multi-use product.

18 48. Defendant has never provided a Proposition 65 warning to any consumer who bought a  
19 PRODUCT, despite the fact that many consumers are still using, and being exposed to mercury  
20 through the use of the PRODUCTS, and Defendant’s knowledge of that fact.

21 **Table 1: Noticed Consumer Products**

PRODUCTS <sup>2</sup>	Etsy Storefront <sup>3</sup>
Deluxe Nadinola Bleaching Cream	TheDetoxClub; PureJamaicanStore
Due Beauty Cream	MystiqueArtShop; WholesaleByHuma

22 <sup>2</sup> The product names listed in Table 1 are provided to assist in identification only and are not exhaustive of possible name  
23 variations under which the PRODUCTS are or may be listed at www.etsy.com.

24 <sup>3</sup> The Etsy storefront names listed in Table 1 are provided to assist in identification only and are not exhaustive of possible  
25 storefronts under which the PRODUCTS are or may be listed at www.etsy.com.

1 Faiza	MystiqueArtShop; KUCHIDRESS
2 La Tia Mana Crema Limpiadora y Curativa	CapirotadaStore; NaturalByLLC; TruVaShopTreasures
3 Miss Key Crema Blanqueadora	OceansBeautyWellness

4 49. The PRODUCTS contain mercury or mercury compounds.

5 50. Since 2014 and continuing to present, multiple health and safety agencies across the  
6 globe issued health alerts, announced investigations into, and advised consumers to beware of skin  
7 lightening products, including for the PRODUCTS, because they contain dangerously high levels of  
8 mercury or mercury compounds, including:

- 9 a) **Deluxe Nadinola Bleaching Cream:** New York City Public Health Warning
- 10 b) **Due Beauty Cream:** New York City Public Health Warning
- 11 c) **Faiza:** New York City Public Health Warning; European Union Rapex Warning
- 12 d) **La Tia Mana Crema Limpiadora y Curativa:** FDA Warning
- 13 e) **Miss Key Crema Blanqueadora:** New York City Public Health Warning

14 51. Defendant ETSY, INC. uses a combination of automated systems and human review  
15 by enforcement specialists to review seller items that are in violation of Defendant's policies. This  
16 review includes consideration of regulatory reports from government agencies.

17 52. According to public health experts, skin whitening cosmetic products likely contain  
18 mercury if (1) the product packaging is in a foreign language and does not contain an ingredient label;  
19 (2) the product is manufactured in Pakistan; (3) the product claims to whiten or bleach the skin. If  
20 these three factors are present, Defendant should either prohibit the sale of the product, require a  
21 Proposition 65 warning regarding the mercury content of the product, or test the product to confirm  
22 the presence or absence of mercury in the product line.

23 53. On December 22, 2023, Plaintiff sent a letter to ETSY, INC. to inform the company  
24 that several mercury-containing skin lightening products were being posted and sold on its website  
25 and such products are toxic to consumers and should not be sold in California or in the United States.

1           54.     On January 18, 2024, Plaintiff sent sixty-day Notices of Violation (“NOTICE”) to  
2 ETSY, INC. listing the PRODUCTS.

3           55.     Despite its knowledge that skin whitening creams may contain mercury or mercury  
4 compounds, ETSY, INC. has permitted, and continues to permit, third party sellers access to  
5 www.etsy.com to sell skin lightening creams that it knows contain toxic amounts of mercury to  
6 California consumers.

7           **D. Defendant has exposed Californians to mercury and mercury compounds without**  
8           **providing a clear and reasonable warning to consumers.**

9           56.     Defendant has not posted any Proposition 65 warnings for mercury in skin lightening  
10 creams at issue in this case.

11           **E. Notice of Violation**

12           57.     A true and correct copy of NOTICE, dated January 18, 2024, is attached as **Exhibit 1**  
13 to this Complaint.

14           58.     In the NOTICE, Plaintiff warned ETSY, INC. that, as a result of its sales of the  
15 PRODUCTS, purchasers and users in the State of California were being exposed to mercury resulting  
16 from consumer’s reasonably foreseeable use, without the individual purchasers and users first having  
17 been provided with a “clear and reasonable warning” regarding such toxic exposures, as required by  
18 Proposition 65.

19           59.     The NOTICE included, *inter alia*, the following information: the name, address, and  
20 telephone number of the noticing individual; the name of the alleged violator; the statute violated; the  
21 approximate time-period during which violations occurred; and descriptions of the violations,  
22 including the chemical involved, the routes of toxic exposure, the type of products causing the  
23 violations (“skin lightening, whitening, and ‘smoothing’ creams containing mercury or mercury  
24 compounds”), and exemplars of the PRODUCTS (identified in Table 1 herein). Defendant ETSY,  
25 INC. and the California Attorney General were provided copies of the NOTICE by mail. Additionally,  
26 Defendant was provided with a copy of a document entitled “The Safe Drinking Water and Toxic  
27  
28

1 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to title  
2 27 of California Code of Regulations section 25093.

3 60. The NOTICE included a certificate of merit, executed by Plaintiff’s attorney stating  
4 that the person executing the certificate had consulted with one or more persons with relevant and  
5 appropriate experience or expertise who has reviewed the facts, studies, or other data regarding  
6 exposure to the listed chemical that is the subject of the NOTICE, and that, based on that information,  
7 the person executing the certificate believes there is a reasonable and meritorious case for this private  
8 action. Factual information sufficient to establish the bases of the certificate of merit was attached to  
9 the certificate of merit served on the California Attorney General for the NOTICE.

10 61. No public prosecutor has commenced and is diligently prosecuting an action against  
11 the violations at issue herein, although the notice period provided in Health and Safety Code section  
12 25249.7 has elapsed.

13 **First Cause Of Action**  
14 **(Violation of Health & Saf. Code, § 25249.6)**

15 62. Plaintiff realleges and incorporates each and every allegation contained in the  
16 preceding paragraphs as though fully set forth herein.

17 63. Under Proposition 65:

18 No person in the course of doing business shall knowingly and intentionally expose  
19 any individual to a chemical known to the state to cause cancer or reproductive  
20 toxicity without first giving clear and reasonable warning to such individual, except  
as provided in section 25249.10.

21 (Health & Saf. Code, § 25249.6.)

22 64. Mercury and mercury compounds are present in the PRODUCTS in such a way as to  
23 expose individuals in California to mercury and mercury compounds.

24 65. The PRODUCTS were distributed, sold, or offered for sale in California and so require  
25 a “clear and reasonable warning” under Proposition 65.





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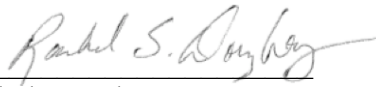
C. Award Plaintiff reasonable attorneys' fees and costs pursuant to Code of Civil Procedure, section 1021.5 and as otherwise appropriate; and

D. Grant such other and further relief as may be just and proper.

Respectfully Submitted,

Dated: March 18, 2024

GREENFIRE LAW, PC

By:   
Rachel Doughty  
Attorney for Plaintiff  
AS YOU SOW

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**03/20/2024 at 01:45:40 PM**

By: Curtiyah Ganter,  
Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF ALAMEDA**

11 As You Sow, a 510 (c)(3) non-profit  
12 corporation,

13 Plaintiff,

14 v.

15 Etsy, Inc.,

16 Defendants,

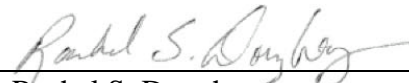
Case No. 24CV068179

**EXHIBIT 1 TO COMPLAINT FILED  
MARCH 18, 2024**

Complaint Filed: March 18, 2024

21 Respectfully submitted,

22 DATED: March 20, 2024

23   
24 \_\_\_\_\_  
25 Rachel S. Doughty  
26 Attorney for Plaintiff As You Sow  
27  
28



**Exhibit 1**

**To Complaint filed March 18,  
2024**



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January 18, 2024

*By Electronic Mail and U.S. Mail*

Etsy, Inc.  
ATTN: Josh Silverman, CEO  
jsilverman@etsy.com

ATTN: Colin Stretch, Chief Legal Officer  
cstretch@etsy.com  
117 Adams St  
Brooklyn, NY 11202

ATTN: Etsy Regulatory Request for Regulators or Government Officials  
regulatory-intake@etsy.com

**RE: 60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) & Demand for Supply Chain Identification**

Dear Mr. Silverman and Mr. Stretch:

This firm represents As You Sow (“Noticing Party”) in connection with this notice of violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code section 25249.5, et seq. (“Proposition 65”). As You Sow is a non-profit organization working to create a safe, just, and sustainable world in which protecting the environment and human rights is central to corporate decision making.

This letter constitutes notice to the addressee that they have violated and continue to violate provisions of Proposition 65 and its implementing regulations. Specifically, the Alleged Violator—Etsy, Inc. (“Violator”)—to which this letter is addressed has violated and continues to violate the warning requirement at section 25249.6 of the California Health & Safety Code, which provides, “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual[.]”

Pursuant to California Health & Safety Code section 25249.7, subdivision (d), the Noticing Party, as defined in that section, intends to bring an enforcement action against the Violator sixty (60) days after effective service of this notice unless the public enforcement agencies listed in the attached Certificate of Service have commenced and are diligently prosecuting an action to rectify these violations. A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under

Proposition 65, is enclosed with the copy of this notice served to the Violator. The specific details of the violations that are the subject of this Notice are provided below.

**Description of Violations**

The Violator has contravened the warning requirement at section 25249.6 of the California Health and Safety Code, which provides, “[no] person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual.” Violators have manufactured, produced, packaged, imported, supplied, distributed, sold or otherwise provided the consumer products containing mercury listed below directly to consumers through the Violator’s website without providing the clear and reasonable warnings required by Proposition 65 and its implementing regulations, dating at least as far back as January 2, 2023, and continuing each day through the present.

- Time Period of Exposure: The violations have been occurring since at least January 2, 2023, and are continuing to this day.
- Provision of Proposition 65 Implicated: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code, section 25249.6, and its implementing regulations.
- Chemical Involved: The listed chemical involved in this notice of violation is mercury and mercury compounds. This chemical is recognized by the State of California as a developmental toxin. Exposure to mercury or mercury compounds occurs through ingestion, inhalation, and dermal absorption when skin-lightening creams, sold on Etsy.com’s website, are applied.
- Types of Products: The specific types of products causing the violations are skin-lightening, whitening, and “smoothing” creams containing 1 ppm or more mercury or mercury compounds, including but not limited to those products specifically listed below in **Table 1**.

**Table 1**

<b>Product</b>	<b>Etsy Storefront<sup>1</sup></b>
Aneeza Gold Beauty Face Cream	NaturalSkincarStudio
Aneeza Gold Beauty Face Cream	OkinArewa
Aneeza Gold Beauty Face Cream	PetsUniqueBeautyCent
BeBe Special Cream	Apsarabazaars
Carotone	Hayveen
Carotone	Mama23store
Carotone	perfectobeautycouk
Carotone	QueenikWealth
CCM	Apsarabazaars
CCM Perfect 365 White Cream	Apsarabazaars

<sup>1</sup> The Notice covers all skin-lightening, whitening, and “smoothing” creams containing mercury or mercury compounds, including those products listed in Table 1, whether or not sold at the storefront listed. The Storefront is provided as a courtesy so that Etsy.com can more efficiently locate and remove dangerous products from its website.

Chandni Whitening Cream	Diamonds Group
Crema la Milagrosa	Bulkmayoreo99
Crema la Milagrosa	NATURALbyLLC
Deluxe Nadinola Bleaching Cream	TheDetoxClub
Due Beauty Cream	MystiqueArtShop
Due Beauty Cream	WholesaleByHuma
Faiza	BeautyShopIndia
Faiza	Nova Jewels Art
Faiza	Creations4all786
Faiza	Cosmeticss4All
Faiza	DiamondsGroup
Faiza	iMinoosh
Faiza	KUCHIDRESS
Faiza	MystiqueArtShop
Faiza	WeddingbyASRBoutique
Faiza	WholesaleByHuma
Face Fresh Beauty Cream	IMinoosh
Face Fresh Beauty Cream	BeautyShopIndia
Goree Day Avocado and Aloevera	IMinoosh
Goree Day and Night Whitening Cream	Nova Jewels Art
Goree Day and Night Whitening Cream	OverseasTrend
Goree Day and Night Whitening Cream	ObserverFinds
Goree Day and Night Whitening Cream	PariAfghanShop
Goree Day and Night Whitening Cream	PakistanShop2023
La Tia Mana Crema Limpiadora y Curativa	La Tia Mana
Miss Key Crema Blanqueadora	OceansBeautyWellness
Nunn Care	BotanicaMexicana
Nunn Care	bulkmayoreo99
Nunn Care	GiftofHealthByPaul
Nunn Care	Menwomengiftshop
Nunn Care	Naturallylifee
Nunn Care	NATURALbyLLC
Nunn Care	TruVaShopTreasures
Nunn Care	Wellnessrootsstore

Nunn Care	YadyTreasures
Snow White Armpit Whitening Underarm Cream	ShopSheida

Description of Exposures: This Notice addresses consumer product exposures to mercury and mercury compounds resulting from the acquisition, purchase, storage, consumption, or reasonably foreseeable use of cosmetics used to lighten, whiten, or “smooth” skin. Mercury is an additive or active ingredient in such cosmetics. Use of the items listed above in Table 1, as well as other items containing mercury as an active ingredient, results in human exposures to mercury.<sup>2</sup> Mercury exposure occurs in three main routes: ingestion, inhalation, or dermal absorption. Ingestion may occur post-application due to insufficient hand washing prior to eating or preparing food or touching of the mouth. Inhalation may occur due to the significant amount of mercury vapor produced by use of these creams, which can affect all household members. Dermal absorption may occur as these products are designed and specifically marketed for direct contact with skin. These exposures occur in residences throughout California where the products are used. No clear and reasonable warning is provided with these products regarding the developmental toxicity of using these products or specifically of mercury.

Pursuant to California Code of Regulations, title 11, section 3100, a Certificate of Merit is attached.<sup>3</sup>

#### **Lack of Non-English Warning**

A number of the products listed in Table 1 include non-English labeling. Those products additionally violate California Code of Regulations, title 27, section 25602, subdivision (b), for failing to carry warnings in the non-English language on the label.

#### **Resolution of Claims Being Noticed**

Based on the allegations set forth in this Notice, the Noticing Party intends to file a citizen enforcement lawsuit against the Violator unless it agrees to remedy the violations set forth above. If the Violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please contact the Noticing Party through its counsel identified below.

#### **Preservation of Relevant Evidence**

This Notice also serves as a demand that the Violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to mercury released from or during the storage, shipment, and use of skin lightening creams; purchases and sales information for such products; communications with any person relating to actual or potential exposures to mercury from the use of such products; representative exemplars of each unit of any of the brands listed above in Table 1 sold since January 2022; the content of internet displays for the products causing the violations; and all communications regarding the alleged violations.

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<sup>2</sup> These products are also illegal adulterated cosmetics sold in violation of FDA regulations. (See 21 C.F.R. § 700.13(d)), and California’s Sherman Act.

<sup>3</sup> A second copy of the entire notice and Certificate of Merit is served on the Attorney General, clearly marked “Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040” with all supporting documentation required by 11 Cal. Code Regs., § 3102 attached thereto.

**Parties**

This Notice is provided on behalf of the following organization:

As You Sow  
Responsible Individual: Danielle Fugere  
Main Post Office  
As You Sow  
PO Box 751  
Berkeley, CA 94701  
(510) 735-8158

The Noticing Parties can be contacted through counsel as identified below:

Rachel Doughty  
Greenfire Law, PC  
2748 Adeline Street, Suite A  
Berkeley, CA 94703  
(510) 900-9502  
rdoughty@greenfirelaw.com

**Demand for Supply Chain Contacts**

Pursuant to California Code of Regulations title 27, article 6, section 25600.2, subdivision (g) you must promptly provide As You Sow (through its counsel) with the names and contact information for each of the manufacturers, producers, packagers, importers, suppliers, and distributors of each of the products listed above in Table 1. **We expect to receive this information within a week.**

Sincerely,



Rachel S. Doughty  
Greenfire Law, PC

Attachments:

Certificate of Merit (All Recipients)

Certificate of Merit Support (Attorney General only)

Certificate of Service (All Recipients)

*The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary* (“Summary”)  
(Noticed Party Only)

### Certificate of Merit

California Health & Safety Code Section 25249.7, Subdivision (d)

I, Rachel Doughty, 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 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.

Dated: January 18, 2024

Greenfire Law, PC

By:



Rachel Doughty