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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

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

Plaintiff,

v.

ETSY, INC. and DOES 1-20, inclusive,  
Defendants.

Case No. 24CV078868

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES AND OTHER  
EQUITABLE RELIEF FOR VIOLATIONS  
OF PROPOSITION 65 (HEALTH & SAF.  
CODE, § 25249.6 et seq.) AND  
CALIFORNIA'S UNFAIR COMPETITION  
LAW (BUS. & PROF. CODE, § 17200 et  
seq.)**

1. Plaintiff AS YOU SOW brings this action pursuant to California's Proposition 65, Health & Safety Code § 25249.6 *et seq.*, and California's Unfair Competition Law ("UCL"), Business and Professions Code § 17200 *et seq.* As regards Plaintiff's Proposition 65 claim, Plaintiff seeks to enjoin defendants to either (1) prevent the sale of skin lightening products that contain mercury or mercury compounds to California consumers on Defendant Etsy, Inc.'s website, www.etsy.com, or (2) comply with Proposition 65's warning requirement by providing a clear and reasonable warning to California customers prior to their purchase of skin lightening products that contain mercury or mercury compounds on www.etsy.com. Plaintiff also seeks civil penalties as provided for under Proposition 65 and other appropriate relief. As regards Plaintiff's UCL claim, Plaintiff seeks to enjoin

1 Defendants from unlawful and unfair business practices and false advertising, namely, selling skin  
2 lighting products that contain mercury in California in violation of the Sherman Act. Plaintiff also  
3 seeks attorney fees and costs, as well as other appropriate relief.

#### 4 **Venue And Jurisdiction**

5 2. This Court has jurisdiction over this action pursuant to Health and Safety Code section  
6 25249.7, which allows enforcement of Proposition 65 in any court of competent jurisdiction, and  
7 pursuant to California Constitution, article VI, section 10, because this case does not present a cause  
8 given by statute to other trial courts.

9 3. This court has jurisdiction over Defendants because they have sufficient minimum  
10 contacts in the State of California, and/or otherwise purposefully avail themselves of the California  
11 market.

12 4. Plaintiff has met the statutory requirements for notice to bring this citizen suit  
13 enforcement action under Health and Safety Code section 25249.7 and its implementing regulations.

14 5. Venue is proper in the Superior Court of California, Alameda County, pursuant to  
15 Code of Civil Procedure sections 393 and 395, because this court is a court of competent jurisdiction,  
16 because plaintiff seeks civil penalties against Defendants, because one or more instances of wrongful  
17 conduct occurred and continue to occur in Alameda County, and/or because Defendants conducted  
18 and continue to conduct business in this county with respect to the consumer products at issue in this  
19 case.

#### 20 **Parties**

21 6. Plaintiff AS YOU SOW is a 501(c)(3) non-profit corporation dedicated to, among  
22 other causes, the protection of the environment, toxics reduction, advancing safe and sustainable food  
23 and consumer products, the promotion and improvement of human health, and the improvement of  
24 worker and consumer rights.

25 7. AS YOU SOW's efforts primarily focus on corporate engagement through shareholder  
26 advocacy, working to make the environment and human rights a central component of corporate  
27

1 decision-making. Where possible, Plaintiff engages senior management to change corporations from  
2 the inside out.

3 8. Since 1992, AS YOU SOW has been working to bring hundreds of manufacturers and  
4 whole industries into compliance with Proposition 65. AS YOU SOW encourages innovative  
5 settlements that reduce hazardous emissions, eliminate consumer exposures to toxics, and provide  
6 funds for employee training to lower occupational exposures to toxic chemicals.

7 9. AS YOU SOW brings this action as a private attorney general in the public interest  
8 pursuant to Health & Safety Code section 25249.7, subdivision (d) and as an entity who has suffered  
9 injury in fact pursuant to California Business & Professions Code section 17204.

10 10. As a direct result of Defendants' violation of California law, AS YOU SOW has had to  
11 divert economic resources to investigate and address Defendants' conduct in promoting the sale of  
12 skin lightening products that contain mercury or mercury compounds to California consumers on  
13 Defendant's website, www.etsy.com, failing to comply with Proposition 65's warning requirement by  
14 providing a clear and reasonable warning to California customers prior to their purchase of skin  
15 lightening products that contain mercury or mercury compounds on www.etsy.com, and engaging in  
16 unlawful and unfair business practices, as well as false advertising.

17 11. Since 2023, paid staff employed by AS YOU SOW have devoted considerable time to  
18 monitoring the www.etsy.com site for skin lightening products that contain mercury or mercury  
19 compounds. AS YOU SOW has directed and paid for the purchase of such products from  
20 www.etsy.com.

21 12. Through informal letters, discussions, and 60-day Notices of Violation, Plaintiff has  
22 demanded that Defendant ETSY, INC. cease to sell skin lightening products that contain mercury or  
23 mercury containing compounds and has provided Defendant with details of its liability under  
24 Proposition 65, the Unfair Competition Law (UCL), and California's Sherman Food, Drug and  
25 Cosmetic Law.

13. For example, On December 22, 2023, AS YOU SOW notified ETSY, INC. of the listing on [www.etsy.com](http://www.etsy.com) of nine different skin lightening, whitening, and “smoothing” creams containing mercury or mercury compounds (“PRODUCTS”), most on multiple different storefronts on [www.etsy.com](http://www.etsy.com). Additionally, in the same letter, AS YOU SOW provided a long list of PRODUCTS which were not found on [www.etsy.com](http://www.etsy.com), but were known to AS YOU SOW to be for sale in other places in the United States, with the objective of preventing these PRODUCTS from ever appearing on [www.etsy.com](http://www.etsy.com). AS YOU SOW provided ETSY, INC. with public health warnings and test results as exhibits to the letter.

14. To address the mercury content of products purchased on [www.etsy.com](http://www.etsy.com), AS YOU SOW has had to fund testing of the products purchased thereon. Plaintiff also has expended further resources to communicate with public health agencies regarding their testing of skin lightening creams that contain mercury or mercury containing compounds.

15. Plaintiffs have thus spent considerable time, energy, manpower, and monetary resources to ensure Defendant's compliance with California law. The resources spent on investigative and enforcement efforts directed towards ETSY, INC.'s sale of skin lightening creams that contain mercury or mercury containing compounds could have been spent in various other ways. Had Plaintiff not had to divert these resources as a result of Defendant's unlawful activities, Plaintiffs would have directed the resources towards other mission-critical activities in Plaintiff's strategic plan.

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

17. Plaintiff does not know the true names and capacities of the defendants named in this action as DOES 1-20, and therefore, sues them under fictitious names. Plaintiff will request permission to amend this complaint or substitute DOE defendants to state their true names and capacities when their identities are ascertained.

## Statutory And Regulatory Background

### **A. Proposition 65**

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

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

20. Under Proposition 65:

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, except as provided in section 25249.10.

(Health & Saf. Code, § 25249.6.)

21. A “person in the course of doing business” does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 116275. (Health & Saf. Code, § 25249.11, subd. (b).)

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

23. A “knowingly” exposure occurs where the party responsible for such exposure has:

knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required.

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

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

25. According to the Office of Environmental Health Hazard Assessment (OEHHA), a warning meets the “clear and reasonable” requirements of Proposition 65 only if it includes: (1) a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black 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 the height of the word “WARNING”; (3) the word “WARNING:” in all capital letters and bold print; and (4) the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause [cancer, birth defects or other reproductive harm or cancer and birth defects or other reproductive harm].” (27 Cal. Code Regs., § 25603, subd. (a).) Where a warning is being provided for an exposure to a single chemical the words “chemicals including” may be deleted from the warning content. (*Id.*)

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

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

<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 and white.

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

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

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

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

## B. Unfair Competition Law

32. California's Unfair Competition Law, Business & Professions Code sections 17200 *et seq.* prohibits businesses from engaging in unlawful or unfair business practices. Section 17500 prohibits unfair, deceptive, untrue, or misleading advertising.

33. California Business & Professions Code section 17203 allows any person to pursue representative claims or relief on behalf of others if the claimant meets the standing requirements of California Business & Professions Code section 17204 and California Civil Procedure Code section 382.

34. Plaintiff has standing under California Business & Professions Code section 17204, which provides that actions for relief pursuant to the UCL shall be prosecuted exclusively in a court of competent jurisdiction by, *inter alia*, any person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

35. For claims based on false advertising, Section 17535 of the UCL provides that any person, association, or organization which violates Section 17500 may be enjoined by any court of competent jurisdiction. Actions for such injunctive relief may be prosecuted by any person, association, or organization who has suffered injury in fact and has lost money or property as a result.

36. An organization meets the economic injury-in-fact standing requirements under the UCL where (1) the organization diverts resources to investigate and counteract a defendant's alleged unlawful business practices, and (2) the defendant's unlawful business practices are inimical to the organization's mission.

37. Plaintiffs have standing under California Civil Procedure Code section 382, which provides that “when the question is one of a common or general interest, of many persons, of when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.”

38. Section 17200 of the UCL prohibits “unlawful” business practices. An unlawful business practice is an act or practice, committed pursuant to business activity, that is at the same time forbidden by law. Virtually any law—federal, state, local or court-made—can serve as a predicate for an action under Section 17200. Defendants have engaged in unlawful business practices predicated on Proposition 65 and California’s Sherman Food, Drug and Cosmetic Law (Health & Saf. Code § 109875 *et seq.*).

39. Section 17200 of the UCL prohibits “unfair” business practices, which include unfair practices perpetrated by competitors which are harmful to other competitors and unfair practices perpetrated by a seller of services which are harmful to the consumer. Conduct is “unfair” within the meaning of Section 17200 if it is offensive to public policy, unscrupulous, oppressive, or substantially injurious to competitors or consumers.



**General Allegations of Fact**

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

40. 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.)

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

42. 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.

43. 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.

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

45. 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.

1 retains the right to employ enforcement mechanisms on an account when its policies  
2 are not followed.

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

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

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

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

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

17 49. Mercury is broadly known to be an intentionally added ingredient in products claiming  
18 skin lightening qualities.

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

24 51. Generally, mercury exists in three forms: elemental mercury, inorganic mercury  
25 compounds, and organic mercury. Mercury is toxic to humans in all forms. The most commonly used  
26

1 active ingredient in skin lightening creams is inorganic mercury because it can be absorbed into the  
2 cream readily and easily.

3 52. Californians acquire, purchase, store, consume, use, and/or dispose of skin lightening  
4 creams containing mercury from third party sellers who operate product pages at [www.etsy.com](http://www.etsy.com).

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

8 54. Ingestion occurs post-application as a result of normal hand-to-mouth behavior, such as  
9 eating or preparing food.

10 55. Inhalation occurs when mercury vapor off-gasses from the creams.

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

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

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

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

25 60. Since 1973, the Food and Drug Administration has warned against the use of mercury  
26 in cosmetics, due to ease of exposure and bioaccumulation:

1 It is well known that mercury compounds are readily absorbed through the unbroken  
2 skin as well as through the lungs by inhalation and by intestinal absorption after  
3 ingestion. Mercury is absorbed from topical application and is accumulated in the  
4 body, giving rise to numerous adverse effects. ... Cosmetic preparations containing  
5 mercury compounds are often applied with regularity and frequency for prolonged  
6 periods. Such chronic use of mercury-containing skin-bleaching preparations has  
7 resulted in the accumulation of mercury in the body and the occurrence of severe  
8 reactions.

9 (21 C.F.R. § 700.13(b).)

10 61. The California Department of Public Health recommends that when someone has a  
11 skin lightening cream they believe contains mercury, that person should immediately dispose of the  
12 cream at a household hazardous waste facility.

13 **C. Defendants knowingly and intentionally exposed and continue to expose Californians to**  
14 **skin lightening creams that contain mercury or mercury compounds.**

15 62. Beginning at least in 2020 and continuing to present, Defendant ETSY, INC. has  
16 permitted third parties access to its online marketplace in order to sell skin lightening, whitening, and  
17 “smoothing” creams containing mercury or mercury compounds (“PRODUCTS”), including  
18 exemplars listed below in Table 1.

19 63. Defendants know that the PRODUCTS were sold to consumers in California.

20 64. Customers who purchase skin lightening creams from [www.etsy.com](http://www.etsy.com) are presumed to  
21 have used them. (*Lee v. Amazon.com, Inc.* (2022) 76 Cal.App.5th 200, 250.)

22 65. Each of the PRODUCTS listed in Table 1 is a multi-use product.

23 66. Defendants have never provided a Proposition 65 warning to any consumer who  
24 bought a PRODUCT, despite the fact that many consumers are still using, and being exposed to  
25 mercury through the use of the PRODUCTS, and Defendant’s knowledge of that fact.

26 **Table 1: Skin Lightening, Whitening, and “Smoothing” Creams Containing Mercury or**  
27 **Mercury Compounds**

Product Exemplars <sup>2</sup>	Etsy Storefront <sup>3</sup>
Deluxe Nadinola Bleaching Cream	TheDetoxClub; PureJamaicanStore; ShopVensHerbsNGrocer
Due Beauty Cream	MystiqueArtShop; WholesaleByHuma
Faiza	MystiqueArtShop; KUCHIDRESS
La Tia Mana Crema Limpiadora y Curativa	CapirotadaStore; NaturalByLLC; TruVaShopTreasures; Maydi24
Miss Key Crema Blanqueadora	OceansBeautyWellness
Jing Zhuang Jinyiqi/“Yiqi”	IGOTBEAUTYSTORE
La Magia Blanca de Michelle Marie Crema Blanqueadora	OceansBeautyWellness
Parley Beauty Cream	GoldieCosmetics; DYSHOPPINGCENTER; Tchadnatural
Shivanya Beauty Cream	Tchadnatural

67. The PRODUCTS contain mercury or mercury compounds.

68. Since at least 2020 and continuing to present, multiple health and safety agencies across the globe issued health alerts, announced investigations into, and advised consumers to beware of skin lightening products, including for the PRODUCTS, because they contain dangerously high levels of mercury or mercury compounds, including:

- a) **Deluxe Nadinola Bleaching Cream:** New York City Public Health Warning
- b) **Due Beauty Cream:** New York City Public Health Warning
- c) **Faiza:** New York City Public Health Warning; European Union Rapex Warning
- d) **La Tia Mana Crema Limpiadora y Curativa:** FDA Warning
- e) **Miss Key Crema Blanqueadora:** New York City Public Health Warning
- f) **Jing Zhuang Jinyiqi/“Yiqi”:** Minnesota Department of Health
- g) **La Magia Blanca de Michelle Marie Crema Blanqueadora:** New York City Public Health
- h) **Parley Beauty Cream:** FDA Warning
- i) **Shivanya Beauty Cream:** European Commission Safety Gate Alert

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

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

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

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

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

72. On January 18, 2024, and March 15, 2024, Plaintiff sent sixty-day Notices of Violation to ETSY, INC., identifying the types of products as skin-lightening, whitening, and “smoothing” creams containing 1 ppm or more of mercury or mercury compounds. These notices identified Deluxe Nadinola Bleaching Cream, Due Beauty Cream, Faiza, La Tia Mana Crema Limpiadora y Curativa, Miss Key Crema Blanqueadora, Jing Zhuang Jinyiqi/“Yiqi” , La Magia Blanca de Michelle Marie Crema Blanqueadora, and Parley Beauty Cream.

73. Despite its knowledge that skin whitening creams may contain mercury or mercury compounds, ETSY, INC. has permitted, and continues to permit, third party sellers access to [www.etsy.com](http://www.etsy.com) to sell skin lightening creams that it knows contain toxic amounts of mercury to California consumers.

**D. Defendants have exposed Californians to mercury and mercury compounds without providing a clear and reasonable warning to consumers.**

74. Defendants have not posted any Proposition 65 warnings for mercury in skin lightening creams at issue in this case.

## E. Notice of Violation

75. A true and correct copy of the January 18, 2024, Notice of Violation is attached as **Exhibit 1** to this Complaint.

76. A true and correct copy of the March 15, 2024, Notice of Violation is attached as **Exhibit 2** to this Complaint.

77. In both notices, Plaintiff warned Defendants that, as a result of its sales of skin lightening, whitening, and “smoothing” creams containing mercury or mercury compounds, purchasers and users in the State of California were being exposed to mercury resulting from consumer’s reasonably foreseeable use, without the individual purchasers and users first having been provided with a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

78. The notices included, *inter alia*, the following information: the name, address, and telephone number of the noticing individual; the name of the alleged violator; the statute violated; the approximate time-period during which violations occurred; and descriptions of the violations, including the chemical involved, the routes of toxic exposure, the type of products causing the violations (“skin lightening, whitening, and ‘smoothing’ creams containing mercury or mercury compounds”), and exemplars of the PRODUCTS. Defendant ETSY, INC. and the California Attorney General were provided copies of the notices by electronic mail. Additionally, Defendants were provided with a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to title 27 of California Code of Regulations section 25093.

79. The notices included a certificate of merit, executed by Plaintiff's attorney stating that the person executing the certificate had consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed the facts, studies, or other data regarding exposure to the listed chemical that is the subject of the notices, and that, based on that information, the person executing the certificate believes there is a reasonable and meritorious case for this private

1 action. Factual information sufficient to establish the bases of the certificate of merit was attached to  
2 the certificate of merit served on the California Attorney General for the notices.

3 80. No public prosecutor has commenced and is diligently prosecuting an action against  
4 the violations at issue herein, although the notice period provided in Health and Safety Code section  
5 25249.7 has elapsed.

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

8 81. Plaintiff realleges and incorporates each and every allegation contained in the  
9 preceding paragraphs as though fully set forth herein.

10 82. Under Proposition 65:  
11 No person in the course of doing business shall knowingly and intentionally expose  
12 any individual to a chemical known to the state to cause cancer or reproductive  
13 toxicity without first giving clear and reasonable warning to such individual, except  
as provided in section 25249.10.

14 (Health & Saf. Code, § 25249.6.)

15 83. Mercury and mercury compounds are present in the PRODUCTS in such a way as to  
16 expose individuals in California to mercury and mercury compounds.

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

19 85. Defendants had constructive and actual knowledge that the PRODUCTS contain  
20 mercury or mercury compounds.

21 86. Consumers are not provided with a clear and reasonable warning prior to purchase of  
22 the PRODUCTS.

23 87. Consumers are not provided with a clear and reasonable warning prior to use of the  
24 PRODUCTS.

25 88. In the course of its business, Defendant ETSY, INC. makes possible and intends for  
26 third parties to sell the PRODUCTS to California consumers.



89. Defendants, in the course of doing business in California, have violated Health and Safety Code section 25249.6 by knowingly and intentionally exposing California consumers to mercury or mercury compounds without first giving clear and reasonable warning to such individuals who were or who would become exposed to mercury or mercury compounds through dermal contact, ingestion, and/or inhalation during the reasonably foreseeable uses of the PRODUCTS.

90. Defendants have caused Californians to be exposed to a listed chemical in violation of Proposition 65, whether such exposure is classified as a consumer exposure, environmental exposure, none of the above, all of the above, some of the above, or otherwise.

91. Under Health and Safety Code section 25249.7, subdivision (b), this Court has authority to assess against Defendants a maximum civil penalty not to exceed \$2,500 per day for each violation of Proposition 65 that has occurred and continues to occur.

92. Under Health and Safety Code section 25249.7, subdivision (a) this Court is authorized to enjoin Defendants to comply with Proposition 65 now and at all times in the future.

### **Second Cause of Action**

**(Violation of 27 Cal. Code Regs., §§ 25602 and 25603)**

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

94. Defendants have violated and continue to violate California Code Regulations, Title 27, section 25603, subdivision (a) because no warning is prominently displayed on the product description page on [www.etsy.com](http://www.etsy.com) and may not be displayed at all to a purchaser prior to completing the purchase.

95. Defendants have violated and continue to violate California Code Regulations, Title 27, section 25602, subd. (b) because Defendants have never provided a Proposition 65 warning in any non-English language used on the labels for the PRODUCTS on [www.etsy.com](http://www.etsy.com).

96. To date, although at least some of the PRODUCTS remain in use, Defendants have failed and continue to fail to provide a clear and reasonable warning as required by Health and Safety Code section 25249.6 to users of the PRODUCTS.

97. As a direct result of Defendants' acts and omissions, the general public in California has been regularly, unlawfully, and involuntarily exposed to mercury and mercury compounds, which are known to the State of California to be developmental toxins.

98. Under Health and Safety Code section 25249.7, subdivision (b), this Court has authority to assess against Defendants a maximum civil penalty not to exceed \$2,500 per day for each violation of Proposition 65 that has occurred and continues to occur.

99. Under Health and Safety Code section 25249.7, subdivision (a) this Court is authorized to enjoin Defendants to comply with Proposition 65 now and at all times in the future.

**Third Cause of Action**  
**(Violation of Bus. & Prof. Code, § 17200 *et seq.*)**

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

101. Defendants have engaged in and continue to engage in business practices that constitute unfair competition as defined in California Business & Professions Code section 17200 *et seq.*

102. Defendants have violated and continue to violate the UCL through unlawful business acts and practices.

103. Defendants have violated and continue to violate the UCL through their unlawful business acts and practices in that these acts and practices violate Proposition 65.

104. Defendants have violated and continue to violate the UCL through their unlawful business acts and practices in that these acts and practices violate California's Sherman Food, Drug and Cosmetic Law (Sherman Law). The Sherman Law imposes criminal liability without fault,

1 reflecting the public policy of protecting the public from dangerous products placed on the market,  
2 irrespective of negligence in their manufacture.

3 105. Under the Sherman Law, it is unlawful for any individual or entity to "receive in  
4 commerce" or "proffer for delivery" a misbranded cosmetic; "receive in commerce," "proffer for  
5 delivery" or "offer for sale" any cosmetic that is adulterated; "deliver, hold, or offer for sale any drug  
6 or device that is misbranded"; "receive in commerce any drug or device that is misbranded or to  
7 deliver or proffer for delivery" such a drug.

8 106. Under the Sherman Law, a skin-lightening cream is classified as a "drug" because it is  
9 "used or intended to affect the structure or any function of the body of human beings or any other  
10 animal." (Health & Saf. Code, § 109925.) It is also a "cosmetic" because it is "intended to be rubbed, .  
11 . . or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying,  
12 promoting attractiveness, or altering the appearance." (Health & Saf. Code § 109900.)

13 107. Skin lightening products that contain mercury or mercury compounds are considered  
14 adulterated and/or misbranded drugs and cosmetics.

15 108. Third party sellers utilize www.etsy.com to sell skin lightening, whitening, and  
16 "smoothing" creams containing mercury or mercury compounds, including the exemplars listed above  
17 in Table 1. In so doing, they receive in commerce, proffer for delivery, deliver, hold, offer for sale,  
18 and sell drugs and cosmetics that are adulterated and/or misbranded.

19 109. Defendant ETSY, INC. is strictly liable for aiding and abetting third party sellers in  
20 furthering these transactions as forbidden by the Sherman Act.

21 110. In violation of the UCL, Defendants are avoiding the full economic cost of  
22 responsibility by neglecting to do conventional due diligence that would be required of any other  
23 commercial actor involved in the sale and delivery of drugs and cosmetics regulated under the  
24 Sherman Law.

25 111. Defendants have violated the UCL's provisions at Section 17500 *et seq.* regarding false  
26 advertising in that Defendants have publicly disseminated untrue or misleading statements and  
27

1 advertising regarding the safety of the PRODUCTS sold on the website, www.etsy.com. Defendants  
2 knew, or in the exercise of reasonable care should have known, that these statements and advertising  
3 were untrue or misleading.

4 112. As a direct and proximate result of Defendants' violation of the UCL, Plaintiff suffered  
5 injury in fact because they were forced to divert limited organizational resources away from their core  
6 mission and have incurred significant costs associated with investigating and communicating with  
7 Defendants.

8 113. As a direct and proximate result of Defendants' violation of the UCL, important public  
9 interest rights have been harmed.

10 **Prayer For Relief**

11 114. WHEREFORE, Plaintiff prays the Court:

12 A. Grant civil penalties pursuant to Health and Safety Code section 25249.7,  
13 subdivision (b)(1) against Defendants in the amount of up to \$2,500 per day for each violation;

14 B. Enter such injunctions or other orders as are necessary pursuant to Health and  
15 Safety Code section 25249.7, subdivision (a) to prevent Defendants from exposing persons within the  
16 state of California to the developmental toxins mercury and mercury compounds caused by the  
17 reasonably foreseeable use of the PRODUCTS without providing clear and reasonable warnings;

18 C. Enter such injunctions or other orders as are necessary pursuant to Business and  
19 Profession Code section 17200 et seq. to prevent Defendants from exposing persons within the state  
20 of California to mercury and mercury compounds caused by the reasonably foreseeable use of the  
21 PRODUCTS;

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

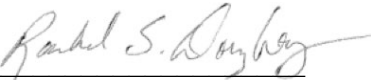
24 E. Grant such other and further relief as may be just and proper.

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Respectfully Submitted,

Dated: June 6, 2024

GREENFIRE LAW, PC

By:   
Rachel Doughty  
Attorney for Plaintiff  
AS YOU SOW

# **Exhibit 1**



RACHEL S. DOUGHTY  
2748 Adeline Street, Suite A  
Berkeley, CA 94703  
Phone: (510) 900-9502, ext. 706  
Email: [rdoughty@greenfirelaw.com](mailto:rdoughty@greenfirelaw.com)  
[www.greenfirelaw.com](http://www.greenfirelaw.com)

January 18, 2024

By Electronic Mail and U.S. Mail

Etsy, Inc.  
ATTN: Josh Silverman, CEO  
[jsilverman@etsy.com](mailto:jsilverman@etsy.com)

ATTN: Colin Stretch, Chief Legal Officer  
[cstretch@etsy.com](mailto:cstretch@etsy.com)  
117 Adams St  
Brooklyn, NY 11202

ATTN: Etsy Regulatory Request for Regulators or Government Officials  
[regulatory-intake@etsy.com](mailto: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	perfectobeaucouk
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.

<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

## **Exhibit 2**



RACHEL S. DOUGHTY  
2748 Adeline Street, Suite A  
Berkeley, CA 94703  
Phone: (510) 900-9502, ext. 706  
Email: [rdoughty@greenfirelaw.com](mailto:rdoughty@greenfirelaw.com)  
[www.greenfirelaw.com](http://www.greenfirelaw.com)

March 15, 2024

*By Electronic Mail and U.S. Mail*

Etsy, Inc.  
117 Adams St  
Brooklyn, NY 11202  
ATTN: Josh Silverman, CEO  
[jsilverman@etsy.com](mailto:jsilverman@etsy.com)  
ATTN: Colin Stretch, Chief Legal Officer  
[cstretch@etsy.com](mailto:cstretch@etsy.com)  
ATTN: Etsy Regulatory Request for Regulators or Government Officials  
[regulatory-intake@etsy.com](mailto:regulatory-intake@etsy.com)

Maria Villaseñor  
dba Capirotada Store  
3721 S. 6000 W.  
W. Valley City, UT 84128

Sherley Sajous  
Registered Agent for  
Oceans Beauty & Wellness LLC  
573 NW 101 St  
Miami, FL 33150  
[sajous85@gmail.com](mailto:sajous85@gmail.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, et.al:

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 addressees that they have violated and continue to violate provisions of Proposition 65 and its implementing regulations. Specifically, the alleged Violators to which this letter is addressed have violated and continue 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[.]”

As to Etsy, Inc., this letter serves as a supplemental 60-Day Notice and does not replace the January 18, 2024 60-Day Notice sent to Etsy, Inc.

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 Violators 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 Violators. The specific details of the violations that are the subject of this Notice are provided below.

### **Description of Violations**

The Violators have 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 Etsy.com’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**

Product	Thumbnail of Product	Etsy Storefront <sup>1</sup>	Parties Noticed
Deluxe Nadinola Bleaching Cream		PureJamaicanStore	Etsy, Inc.
Jing Zhuang Jinyiqi (“Yiqi”)		IGOTBEAUTYSTORE	Etsy, Inc.
La Tia Mana Crema		NaturalByLLC	Etsy, Inc.
La Tia Mana Crema		CapirotadaStore	Etsy, Inc. Maria Villaseñor dba Capirotada Store
La Tia Mana Crema		TruVaShopTreasures	Etsy, Inc.
Magia Blanca de Michelle Marie Crema Blanqueadora		OceansBeautyWellness	Etsy, Inc. Oceans Beauty & Wellness LLC
Miss Key Crema Blanqueadora		OceansBeautyWellness	Etsy, Inc. Oceans Beauty & Wellness LLC
Parley Beauty Cream		GoldieCosmetics	Etsy, Inc.
Parley Beauty Cream		DYSHOPPINGCENTER	Etsy, Inc.

<sup>1</sup> This Supplemental 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 presently at the storefront listed.



- **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>

### **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.

### **Parties**

This Notice is provided on behalf of the following person and organization:

As You Sow  
2201 Broadway  
Oakland, CA 94612  
(510) 735-8158

---

<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.

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 Parties 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: March 15, 2024

Greenfire Law, PC

By:



Rachel Doughty