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ELECTRONICALLY FILED
Superior Court of California
County of Marin
03/12/2025
James M. Kim, Clerk of the Court
By: J. Chen, Deputy

5 Attorneys for Plaintiff
6 BIOSPHERE WATCH GROUP, SPC

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF MARIN**

9 BIOSPHERE WATCH GROUP, SPC,

Case No.: CV0005640

10 Plaintiff,

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

11 v.

12 RETAIL SERVICES & SYSTEMS, INC.
dba TOTAL WINE & MORE,
13 CALIFORNIA FINE WINE & SPIRITS
LLC dba TOTAL WINE & MORE, and
14 DOES 1 through 100, inclusive.

(Health & Safety Code § 25249.6 *et seq.*)

15 Defendants.
_____ /

16 **I.**
INTRODUCTION

17 1. This Complaint is a representative action brought by Biosphere Watch Group, SPC
18 (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
19 seeks to remedy Defendants’ failure to inform the People of exposure to Δ^9 -Tetrahydrocannabinol
20 (also known as “Delta-9-Tetrahydrocannabinol” or “THC”), a developmental/reproductive toxicant.
21
22

1 For a period of at least several months, at over 40 physical Total Wine retail locations throughout
2 California including in Marin County, as well as through their online store (www.totalwine.com),
3 Defendants exposed consumers to THC. Defendants did this by importing, selling, and/or
4 distributing numerous products which contain and expose consumers to THC, including but not
5 limited to: Squared THC Sparkling Beverages and Sodas, ENDO Tune UP THC Sparkling
6 Beverages, Snoop Dogg Doggy Spritz, Snoop Dogg Death Row Records Do It Fluid, and NORTH
7 THC Gummies (“Products”). Further investigation revealed numerous flavors and variants of each
8 of the foregoing, each of which is a distinct Product. Given the very nature of the Products,
9 Defendants knew and intended that customers would be exposed to THC via ingestion of and dermal
10 contact with the Products.

11 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health and Safety Code, section 2529.6 et seq. (“Proposition 65”), “[n]o person in the
13 course of doing business shall knowingly and intentionally expose any individual to a chemical
14 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
15 warning to such individual ...” (Health & Safety Code §25249.6)

16 3. California identified and listed THC as a chemical known to cause developmental/
17 reproductive toxicity on January 3, 2020.

18 4. As described herein, Defendants failed to sufficiently warn consumers and individuals
19 in California about potential exposure to THC in connection with Defendants’ importation, sale,
20 and/or distribution of the Products. This is a violation of Proposition 65.

21 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
22 in California before exposing them to THC whenever the Products are sold in California in the future.
(Health & Safety Code § 25249.7(a).)

1 Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65 along with
2 attorney's fees and costs. (Health & Safety Code § 25249.7(b).)

3 **II.**
4 **PARTIES**

5 6. Plaintiff BIOSPHERE WATCH GROUP, SPC ("Plaintiff") is a Social Purpose
6 Corporation in the State of California dedicated to informing the People of California about
7 chemicals that may cause cancer, birth defects, or other reproductive harm. It brings this action in
8 the public interest pursuant to Health & Safety Code § 25249.7.

9 7. Defendant RETAIL SERVICES & SYSTEMS, INC. dba TOTAL WINE & MORE
10 is a corporation organized and existing under the laws of Maryland. Defendant RETAIL
11 SERVICES & SYSTEMS, INC. does not have an active registration as a foreign corporation with
12 the California Secretary of State at this time, yet it does business in the County of Marin within
13 the meaning of Health and Safety Code § 25249.11. On information and belief, Defendant
14 RETAIL SERVICES & SYSTEMS, INC. imports, sells, and/or distributes the Products in
15 California and Marin County. On information and belief, Defendant RETAIL SERVICES &
16 SYSTEMS, INC. has a physical retail store where the Products were sold in Marin County, in
17 addition to over 40 other stores across California,¹ as well as an online store where consumers
18 anywhere in the state (including in Marin County) can order the Products to be delivered straight
19 to their door. On information and belief, Defendant RETAIL SERVICES & SYSTEMS, INC. has

20 ¹ According to Total Wine's website, there are 46 physical Total Wine stores across California as
21 of the date of filing of this Complaint. See <https://www.totalwine.com/store-finder/browse/CA>.
22 On information and belief, there were approximately the same number of stores when the Notice
was sent.

1 at least 10 employees,² and an annual sales volume of over six hundred and fifty million dollars
2 (\$650,000,000). Defendant RETAIL SERVICES & SYSTEMS, INC. does business as TOTAL
3 WINE & MORE in California.

4 8. Defendant CALIFORNIA FINE WINE & SPIRITS LLC dba TOTAL WINE &
5 MORE is a limited liability corporation organized and existing under the laws of Maryland.
6 Defendant CALIFORNIA FINE WINE & SPIRITS LLC is registered as a foreign corporation
7 with the California Secretary of State at this time, and does business in the County of Marin
8 within the meaning of Health and Safety Code § 25249.11. On information and belief, Defendant
9 CALIFORNIA FINE WINE & SPIRITS LLC imports, sells, and/or distributes the Products in
10 California and Marin County. On information and belief, Defendant CALIFORNIA FINE WINE
11 & SPIRITS LLC holds alcoholic beverage licenses required to operate, and operates, the physical
12 retail store where the Products were sold in Marin County, in addition to over 40 other stores
13 across California.³ On information and belief, Defendant CALIFORNIA FINE WINE &
14 SPIRITS LLC also does business as TOTAL WINE & MORE in California.

15 9. Plaintiff does not know the true names and/or capacities, whether individual,
16 partners, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for
17 that reason sues said defendants under fictitious names. Plaintiff will seek leave to amend this
18 Complaint when the true names and capacities of these defendants have been ascertained.
19 Plaintiff is informed and believes and thereon alleges that these defendants are responsible in
20 whole or in part for Plaintiff's damages.

21 ² According to Total Wine's website, the company has more than eleven thousand Team
22 Members. See <https://www.totalwine.com/about-us/our-company>.

³ According to Total Wine's website, there are 46 physical Total Wine stores across California as
of the date of filing of this Complaint. See <https://www.totalwine.com/store-finder/browse/CA>.

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III.

VENUE AND JURISDICTION

10. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.

11. Venue is proper in the Marin County Superior Court pursuant to Code of Civil Procedure §§ 394, 395, and 395.5. Wrongful conduct occurred in this County, and Defendants conducted business in this County as it relates to the Products.

12. Defendants have sufficient minimum contacts in the State of California or otherwise purposely avail themselves of the California market. Exercising jurisdiction over Defendants is consistent with traditional notions of fair play and substantial justice.

IV.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(Violation of Proposition 65 – Against All Defendants)**

13. Plaintiff incorporates by reference each and every allegation contained above.

14. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.

15. Defendants imported, sold, and/or distributed Products containing THC in violation of Health and Safety Code § 25249.6 *et seq.* Plaintiff is informed and believes such violations continued at numerous retail outlets operated by Defendants as well as on Defendants' website after receipt of the Notice (defined *infra*), and may continue to occur into the future

1 absent judicial relief. Specifically, Plaintiff's investigation revealed continuing violations by
2 Defendants as late as September 2, 2024, which is 54 days after issuance of the Notice and
3 following multiple conversations with Plaintiff's attorneys regarding the violations.

4 16. In importing, selling, and/or distributing the Products, Defendants failed to provide
5 clear and reasonable warnings to consumers and individuals in California who may be exposed to
6 THC through reasonably foreseeable use of the Products.

7 17. The Products expose individuals to THC through ingestion and dermal contact and
8 ingestion. These exposures are natural and foreseeable consequences of Defendants placing the
9 Products into the stream of commerce. As such, Defendants intended that consumers will ingest
10 and handle the Products, thereby exposing them to THC.

11 18. Defendants knew or should have known that the Products contained THC, and
12 exposed individuals to THC in the ways provided above. Indeed, some products had THC in their
13 names and they were marketed as containing THC, such as: Squared THC Sparkling Beverages
14 and Sodas, ENDO Tune UP THC Sparkling Beverages, and NORTH THC Gummies.
15 Additionally, the Notice informed Defendants of the presence of THC in the Products, which
16 provided actual knowledge to Defendants. Likewise, media coverage concerning THC in
17 consumer products provided constructive notice to Defendants.

18 19. Defendants' actions in this regard were deliberate and not accidental.

19 20. More than sixty (60) days prior to naming each defendant in this lawsuit, Plaintiff
20 issued a 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition
21 65. Plaintiff provided the Notice to the various required public enforcement agencies along with a
22 certificate of merit. The Notice alleged that Defendants violated Proposition 65 by failing to

1 sufficiently warn consumers in California of the health hazards associated with exposures to THC
2 contained in the Products. This Notice was sent to Defendants on July 10, 2024 and noted
3 violations dating at least as far back as June 1, 2024.

4 21. The appropriate public enforcement agencies provided with the Notice failed to
5 commence and diligently prosecute a cause of action against Defendants.

6 22. Individuals exposed to THC contained in Products through ingestion and dermal
7 contact resulting from reasonably foreseeable use of the Products have suffered and continue to
8 suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

9 23. To the extent that Defendants are retailers of the Products, they are responsible for
10 providing appropriate warnings and are liable for not doing so pursuant to 27 Cal. Code of Regs.
11 § 25600.2 (“Responsibility to Provide Consumer Product Exposure Warnings”). On information
12 and belief, one or more of the circumstances in subsection (e) of 27 C.C.R. § 25600.2 exists.

13 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each
14 violation of Proposition 65 pursuant to Health & Safety Code § 25249.7(b). Injunctive relief is
also appropriate pursuant to Health & Safety Code § 25249.7(a).

15 **V.**

16 **PRAYER FOR RELIEF**

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

18 1. Civil penalties in the amount of \$2,500 per day for each violation of Proposition
19 65. Plaintiff alleges that civil penalties total a minimum of \$10,000,000;
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1 2. A preliminary and permanent injunction against Defendants from manufacturing,
2 importing, selling, and/or distributing Products in California without providing a clear and
3 reasonable warning as required by Proposition 65 and related Regulations;

4 3. Reasonable attorney's fees and costs of suit; and

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

6
7 Dated: March 12, 2025

Respectfully submitted,

8 **THE LAW OFFICES OF OMAR FIGUEROA, INC.**

Omar Figueroa

Lauren Mendelsohn

9 Attorneys for Plaintiff

10 BIOSPHERE WATCH GROUP, SPC

11 By: 
12 Lauren Mendelsohn

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EXHIBIT A:
60-DAY NOTICE OF VIOLATION



Retail Services & Systems, Inc. dba Total Wine & More
ATTN: Legal Department
6600 Rockledge Drive, Suite 150
Bethesda, MD, 20817

Retail Services & Systems, Inc. dba Total Wine & More
ATTN: The Corporation Trust, Incorporated
2405 York Road, Suite 201
Lutherville Timonium, MD, 20193

California Fine Wine & Spirits LLC dba Total Wine & More
ATTN: Vice President Thomas Haubentricker
6600 Rockledge Drive, #150
Bethesda, MD, 20817

California Fine Wine & Spirits LLC dba Total Wine & More
% Amanda Garcia, CT Corporation System
330 N. Brand Blvd.
Glendale, CA, 91203

July 10, 2024

Amended 60-Day Notice of Violation:
California Health and Safety Code §25249.5 *et seq.* (Proposition 65)

To Whom it May Concern,

My law office represents Biosphere Watch Group SPC, a California social purpose corporation that seeks to safeguard the public from exposure to harmful chemicals by helping to reduce the prevalence of such toxins, educate about warning requirements, encourage corporate responsibility, and create a safe environment for workers and the public.

I am sending this notice on behalf of Biosphere Watch Group SPC acting in the public interest. I have identified the following violations of California's Safe Drinking Water and Toxic

Enforcement Act of 1986 ("Proposition 65" or "Prop. 65" or "the Act"), codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products listed below. I hereby send this 60-Day Notice ("Notice") to the alleged violators listed above, who are persons in the course of business in California (each a "Violator"), and to the public prosecutors listed in the attached Electronic Distribution List. The violations covered by this Notice consist of the product exposure, routes of exposure and types of harm potentially resulting from exposure to the hazardous substance(s) identified below, as follows:

Covered Products:	See Exhibit A
Listed Chemicals:	Delta-9-Tetrahydrocannabinol (Δ 9-THC or Delta-9-THC)
Routes of exposure:	Ingestion, dermal
Types of harm:	Birth defects and other reproductive harm

Nature of Alleged Violation (Consumer Product Exposure)

Section 25249.6 of the Act states that "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..." The products that are causing consumer exposures to Delta-9-THC ("Listed Chemical") in violation of Proposition 65 which are covered by this notice are hereafter referred to as the "Covered Products."

Please note that these are only examples of the full range of Covered Products manufactured and/or sold by Violator for which penalties may apply. Exposures to the Listed Chemicals from use of the Covered Products have occurred, and continue to occur, without the "clear and reasonable warning" required by Proposition 65. Such exposures date at least as far back as June 1, 2024 and possibly earlier, beginning when the Covered Products were first sold in California without the appropriate warning(s).

Without clear and reasonable warnings regarding the potentially harmful effects from exposure to the Listed Chemicals that could result from using the Covered Products, California citizens lack the information they need to make informed decisions regarding how to reduce or eliminate their risk of toxic exposure. Thus, manufacturers of Covered Products must provide appropriate warnings. In addition, pursuant to Proposition 65, internet sales of the Covered Products must also provide the customer with a clear and reasonable warning about the risk of reproductive harm from the Listed Chemicals.

Consumers, including pregnant women of childbearing age, are exposed to the Listed Chemicals when they ingest or are otherwise exposed to the Covered Products, which are reasonably foreseeable uses of the Covered Products. The Listed Chemicals can also be transferred to consumers' mouths via hand-to-mouth activities after coming into contact with the Covered Products.

Here, Violator knowingly and intentionally exposed, and continues to expose, consumers within the State of California to the Listed Chemicals without providing the required clear and reasonable warnings that the Covered Products contain the Listed Chemicals. Biosphere Watch Group desires to protect the public by causing Violator to stop manufacturing, distributing and/or selling the Covered Products, or to provide sufficiently clear and reasonable warnings as required by Proposition 65.

Number and Duration of Violations

Each and every instance where a Covered Product is offered for sale to a customer within the State of California without an appropriate clear and reasonable warning, in the format required by California statute and regulations, constitutes a separate violation of Proposition 65. This includes transactions made in-person, via catalog, over the phone, and over the internet by the recipients of this Notice as well as by any other sellers of the Covered Products. Please note that the Covered Products specifically identified in this Notice are not an exhaustive list of products that violate Proposition 65 and for which a penalty may apply.

The violations in this case are ongoing and will continue to occur until the Covered Products are no longer sold to customers within California, or are sold with an appropriate warning. As mentioned, these violations have been occurring since at least June 1, 2024 as well as every day since the Covered Products were introduced into commerce within California.

Proposition 65 Information

For general information about the requirements of California's Proposition 65, you may contact the Office of Environmental Health Hazard Assessment's (OEHHA) Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" prepared by OEHHA is attached.

Resolution of Noticed Claims

Based on the information contained herein and in the Certificate of Merit provided to the Attorney General, Law Firm intends to file a citizen enforcement action on behalf of Biosphere Watch Group against Violator sixty (60) days after effective service of this Notice unless the relevant public enforcement agencies have commenced and are earnestly prosecuting an action against Violator to redress the violations discussed in this Notice; or, unless Violator enters into a binding written agreement that addresses said violations by either recalling any Covered Products which have already been sold or taking steps to provide warnings to consumers who have purchased the Covered Products, adding the appropriate warning to Covered Products that will be sold in the future, and paying an appropriate civil penalty.

If Violator desires to resolve this dispute without resorting to costly and time-consuming litigation, I welcome the opportunity to discuss a potential settlement that serves the public's interest in preventing exposure to toxic chemicals. Please direct all such communications to my office at the address below. Settlements can be finalized once the 60-day notice period has elapsed.

Please note that any settlement, civil complaint or substantive court orders in this matter must be submitted to the state Attorney General. Neither I nor my client speak for the Attorney General, or any district attorney or city attorney who receives this Notice.

Preservation of Evidence

This Notice serves as a respectful demand to preserve and maintain all relevant evidence pending resolution of this matter. Such relevant evidence includes but is not limited to any information relating to the presence or potential presence of the Listed Chemicals in the Covered Products (such as Certificates of Analysis (COAs) and other laboratory test results); purchase and sales information for any of the Covered Products sold within California; any efforts to comply with Proposition 65 with respect to the Covered Products; communications relating to the presence or potential presence of the Listed Chemicals in Covered Products (such as statements on Violator's packaging or website); and representative exemplars of each specific product falling within the Covered Products. This demand applies to all relevant evidence for Covered Products sold in the State of California, as far back as when the Covered Products were first produced or sold by Violator, through the date of the resolution of the claims alleged in this Notice.

Additional Notice Information

Examples of Covered Products that were recently observed as being available for purchase or use by consumers within the State of California without the required clear and reasonable warning, which are covered by this Notice, are identified in Exhibit A. The examples are not an exhaustive list. They are intended to assist Violator in investigating and identifying the extent of the potential exposures to the Listed Chemicals from other items that Violator manufactured, distributed, or sold which are not specifically named here but which fall within the definition of the Covered Products.

In accordance with 27 CCR §25600.2(g), please promptly answer the questions on Exhibit B, and return with receipt confirmation to the mailing and/or email address listed below within fifteen (15) calendar days of receipt of this letter.

Contact Information

Please refrain from contacting my client. Rather, please direct all communications regarding this Notice to my office at the following address, email and/or phone number:

Law Offices of Omar Figueroa
ATTN: Prop. 65 Division
7770 Healdsburg Avenue
Sebastopol, CA, 95472
707-829-0215
prop65@omarfigueroa.com

I look forward to your prompt response. Thank you.



Lauren A. Mendelsohn

Attached:

- Exhibit A
- Exhibit B
- Proposition 65 - A Summary
- Certificate of Merit
- Proof of Service

EXHIBIT A

Covered Products
(Not an exhaustive list of potential violations)

Product(s) and Flavors	URLs for Exemplars	Manufacturer(s)	Chemical(s)
Snoop Dogg Death Row Records Do It Fluid, including but not limited to the following flavors: <ul style="list-style-type: none"> Blood Orange 	https://www.totalwine.com/beer/thc/thc-beverages/snoop-do-it-fluid-thc-3mg-blood-orange/p/2126247034?s=1134&igrules=true	Hill Beverage Co LLC	Delta-9-THC
Snoop Dogg Doggy Spritz, including but not limited to the following flavors: <ul style="list-style-type: none"> Cherry Limeade 	https://www.totalwine.com/beer/thc/thc-beverages/snoop-doggy-spritz-thc-3mg-cherry-limeade/p/2126247038?s=1134&igrules=true	Hill Beverage Co LLC	Delta-9-THC
Squared THC sodas & sparkling waters, including but not limited to the following flavors: <ul style="list-style-type: none"> Sparkling Pink Lemonade Grapefruit 	https://www.totalwine.com/beer/thc/thc-beverages/squared-thc-5mg-pink-lemonade/p/2126242315 https://www.totalwine.com/beer/thc/thc-beverages/squared-thc-5mg-grapefruit/p/2126242319?s=1134&igrules=true	Rexis Biotech Inc.	Delta-9-THC
ENDO Tune UP THC sparkling beverages,	https://www.totalwine.com/beer/thc/thc-beverages/endo-t	Endo Productions	Delta-9-THC

— LAW OFFICES OF —
OMAR FIGUEROA

including but not limited to the following flavors: <ul style="list-style-type: none"> Cherry 	une-up-thc-4mg-cherry-sparkling-water/p/2126247173?s=1134&igrules=true		
NORTH THC gummies, including but not limited to the following flavors: * <ul style="list-style-type: none"> Berry Lemonade 	Not shown on Violator's website but available in-store. One or more stores did not display or provide a warning, or obscured the warning that was provided.	NORTH Canna Co.	Delta-9-THC

EXHIBIT B

As it relates to each of the Covered Products, including but not limited to those identified on Exhibit A, provide the full legal entity name and any known contact information for:

1. Any and all manufacturers
2. Any and all producers
3. Any and all packagers
4. Any and all direct vendors
5. Any and all exporters
6. Any and all shippers
7. Any and all distributors
8. Any and all sellers

Please send the above-requested information to the Law Offices of Omar Figueroa within fifteen (15) calendar days of receipt of this Notice to the mailing and/or email address listed in the Notice. Thank you for your anticipated cooperation.

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

CERTIFICATE OF MERIT

I, Lauren Mendelsohn, hereby declare:

This Certificate of Merit accompanies the attached initial sixty-day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.

I am the attorney for the noticing party.

I have consulted with one or more persons with relevant and appropriate experience or expertise who has/have reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action and/or the listed chemical in substantially similar products and exposes individuals through the same potential routes.

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.

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 under Health and Safety Code §25249.7(h)(2) including (i) the identity of the persons consulted with and relied on by the certifier, and (ii) certain facts, studies, or other data reviewed by those persons.

Dated: July 10, 2024



Lauren A. Mendelsohn, Esq.



PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years and not a party to the within action. I am a resident or employed in the county where the mailing occurred. My business address is 7770 Healdsburg Avenue, Sebastopol, California, 95472.

On the date below, I caused to be served the following documents:

SIXTY-DAY NOTICE OF VIOLATION OF HEALTH & SAFETY CODE § 25249.5 ET. SEQ. (PROPOSITION 65);
CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY; PROOF OF SERVICE; ELECTRONIC DISTRIBUTION LIST

By First Class Certified Mail, Return Receipt through the U.S. Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each alleged violator listed below and providing such envelope to a U.S. Postal Service Representative.

Retail Services & Systems, Inc. dba Total Wine & More
ATTN: Legal Department
6600 Rockledge Drive, Suite 150
Bethesda, MD, 20817

California Fine Wine & Spirits LLC
ATTN: Vice President Thomas Haubentricker
6600 Rockledge Drive, #150
Bethesda, MD, 20817

Retail Services & Systems, Inc. dba Total Wine & More
ATTN: The Corporation Trust, Incorporated
2405 York Road, Suite 201
Lutherville Timonium, MD, 20193

California Fine Wine & Spirits LLC
% Amanda Garcia, CT Corporation System
330 N. Brand Blvd.
Glendale, CA, 91203

By Electronic Mail by causing true and correct electronic copies of the above documents to be e-mailed to public prosecutors on the attached "Electronic Distribution List."

By Electronic Upload by causing true and correct copies of the above documents (and additional Factual Information in Support of Certificate of Merit) to be uploaded to the California Attorney General's website at the web address below.

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
<https://oag.ca.gov/prop65/add-60-day-notice>

Executed on July 10, 2024, at Sebastopol, California.

A handwritten signature in black ink, appearing to read "Lauren Mendelsohn".

Lauren Mendelsohn, Esq.

Proposition 65 Public Prosecutors: Electronic Distribution List

Alameda County District Attorney CEPDProp65@acgov.org	San Diego District Attorney SanDiegoDAProp65@sdcca.org
Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	San Diego City Attorney CityAttyProp65@sandiego.gov
Contra Costa County District Attorney sgrassini@contracostada.org	San Francisco District Attorney alexandra.grayner@sfgov.org
Fresno County District Attorney consumerprotection@fresnocountyca.gov	San Francisco City Attorney Prop65@sfcityattorney.org
Inyo County District Attorney inyoda@inyocounty.us	San Joaquin County District Attorney DAConsumer.Environmental@sjcca.org
Lassen County District Attorney dchandler@co.lassen.ca.us	San Luis Obispo County District Attorney edobroth@co.slo.ca.us
Mariposa County District Attorney mcda@mariposacounty.org	Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us
Marin County District Attorney consumer@marincounty.gov	El Dorado County District Attorney EDCDAPROP65@edcca.us
Merced County District Attorney Prop65@countyofmerced.com	Santa Clara County District Attorney EPU@da.sccgov.org
Monterey County District Attorney Prop65DA@co.monterey.ca.us	San Jose City Attorney Proposition65notices@sanjoseca.gov
Napa County District Attorney CEPD@countyofnapa.org	Santa Cruz County District Attorney Prop65DA@santacruzcounty.us
Nevada County District Attorney DA.Prop65@co.nevada.ca.us	Sonoma County District Attorney Jeannie.Barnes@sonoma-county.org
Placer County District Attorney Prop65@placer.ca.gov	Tulare County District Attorney Prop65@co.tulare.ca.us
Plumas County District Attorney Davidhollister@countyofplumas.com	Ventura County District Attorney daspecialops@ventura.org
Riverside County District Attorney Prop65@rivccda.org	Yolo County District Attorney cfepd@yolocounty.org
Sacramento County District Attorney Prop65@sacda.org	

<https://oag.ca.gov/prop65/electronic-service>