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SUMMONS ISSUED

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Per local Rule, This case is assigned to Judge Hiramoto, Joni T., for all purposes.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

PUBLIC PROTECTION ALLIANCE LLC, a California limited liability company, Plaintiff, vs. ANIMA MUNDI HERBALS LLC, a New York limited liability company; and DOES 1 through 100, inclusive, Defendants.	Case No.: C26-03435 **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES** (Cal. Health & Safety Code section 25249.5 *et seq.*)

Plaintiff Public Protection Alliance LLC hereby alleges:

INTRODUCTION

1. Plaintiff Public Protection Alliance LLC ("Plaintiff" or "PPA") brings this action as a private attorney general enforcer and in the public interest of the citizens of the State of California. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 ("Proposition 65"), "[n]o 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 . . ."

2. Defendants Anima Mundi Herbals LLC ("Anima Mundi") and Does 1 through 100 ("Doe Defendants," collectively with Anima Mundi, the "Defendants") exposed and continue to

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expose individuals to lead and cadmium by manufacturing, importing, selling, and/or distributing protein powder including, but not limited to, Anima Mundi Apothecary Chocolate Protein Superfood Powder ("Products"). Defendants knew and intended that consumers would ingest the Products containing lead and cadmium.

3. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to lead and cadmium in connection with their manufacture, import, sale, or distribution of the Products.

4. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers in California before exposing them to lead and cadmium in the Products. (Cal. Health & Safety Code § 25249.7, subdivision (a).) Plaintiff also seeks civil penalties against Defendants for violations of Proposition 65 along with attorneys' fees and costs. (Health & Saf. Code, § 25249.7, subd. (b).)

PARTIES

5. Plaintiff PPA is a California limited liability company acting in the interest of the general public seeking to further, among other causes, the protection of the environment, toxin reduction, the promotion and improvement of human health, the improvement of consumer rights, and corporate accountability. It brings this action in the public interest pursuant to Health and Safety Code section 25249.7.

6. Anima Mundi is a New York limited liability company with its principal place of business at 31 Noble Street, Brooklyn, New York 11222. Anima Mundi is a business that develops, manufactures, markets, distributes, and/or sells the Products in California and Contra Costa County, including through its website, animamundiherbals.com, an affiliated retail apothecary in Los Angeles County, and third-party retailers.

7. Does 1 through 100 are named herein under fictitious names as their true names and capacities are unknown to PPA. PPA is informed and believes, and thereon alleges, that each Doe is responsible, in some actionable manner, for the events and happenings hereinafter referred to, either through said Doe's conduct, or through the conduct of its agents, servants or employees, or in some other manner, causing the harms alleged by PPA in this Complaint. When said true names and

capacities of Does are ascertained, PPA will seek leave to amend this Complaint to set forth the same.

8. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, each of the Defendants was—and remains—a person in the course of doing business within the meaning of Health and Safety Code section 25249.11 and is subject to Proposition 65.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. The Health and Safety Code statute upon which this action is based does not give jurisdiction to any other court. (Health & Saf. Code § 25249.7.)

10. This Court is the proper venue for the action because the causes of action have arisen in the County of Contra Costa where some of the violations of law have occurred, and will continue to occur, due to the ongoing sale of the Products. Furthermore, venue is proper in this Court under California Code of Civil Procedure sections 393, 395, and 395.5.

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

12. On or around April 17, 2026, Plaintiff served 60-Day Notice of Violation, California Attorney General No. 2026-01767 ("Notice"), on Anima Mundi, the California Attorney General, the Contra Costa County District Attorney's Office, other public enforcers, and others, along with a certificate of merit, signed by counsel, and certificate of service. Plaintiff served the confidential factual basis supporting the certificate of merit on the California Attorney General. The Notice served on Anima Mundi also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." The Notice alleged that Anima Mundi violated Proposition 65 by failing to sufficiently warn individuals in California of the exposures to lead and cadmium in the Products. Attached hereto as Exhibit A is a true and correct copy of the Notice and associated documents. More than sixty days have passed since PPA served the Notice and no public enforcement agency has commenced and is diligently prosecuting an action against the violation in

the Notice.

STATUTORY AND REGULATORY BACKGROUND

13. The warning requirement of Proposition 65 is contained in California Health and Safety Code section 25249.6, 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 . . .

14. The Office of Environmental Health Hazard Assessment ("OEHHA"), a department of CalEPA, is the lead agency in charge of the implementation of Proposition 65. OEHHA administers the Proposition 65 program and promulgates regulations that govern Proposition 65 in general, including warnings to comply with the statute. The regulations define "expose" as "to cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical. An individual may come into contact with a listed chemical through water, air, food, consumer products and any other environmental exposure as well as occupational exposures." (Title 27, California Code of Regulations, section 25102, subdivision (i).)

15. In this case, the exposures are caused by consumer products. A consumer product is defined as "any article, or component part thereof, including food, that is produced, distributed, or sold for the personal use, consumption or enjoyment of a consumer." (27 Cal. Code Regs., § 25600.1, subd. (d).) Food includes "dietary supplements." (27 Cal. Code Regs., § 25600.1, subd. (g).) A consumer product exposure is "an exposure that results from a person's acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer product, including consumption of a food." (27 Cal. Code Regs., § 25600.1, subd. (e).)

16. To qualify as a clear and reasonable warning under the regulatory safe harbor, consumer product warnings "must be prominently displayed on a label, labeling, or sign, and must be displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use." (27 Cal. Code Regs., § 25601, subd. (c).) Consumer product warnings must be provided at each point of

display of the product, via an electronic device or process prior to purchase, or on the product warning label. (27 Cal. Code Regs., § 25602, subd. (a).) For online purchases of consumer products, the warning must also appear on the product page, through a "WARNING" link on the display page, or before checkout is completed. (27 Cal. Code Regs., § 25602, subd. (b).)

17. Proposition 65 establishes a procedure by which the State is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, § 25249.8.)

18. Lead was listed as a chemical known to the State of California to cause developmental toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a chemical known to the State of California to cause cancer on October 1, 1992. OEHHA has established the safe harbor levels for lead: the Maximum Allowable Dose Level ("MADL") for lead as a chemical known to cause reproductive toxicity is 0.5 micrograms per day (27 Cal. Code Regs., § 25805, subd. (b)); the No Significant Risk Level for lead as a carcinogen is 15 micrograms per day (27 Cal. Code Regs., § 25705, subd. (b)).

19. Cadmium was listed as a chemical known to the State of California to cause developmental and reproductive toxicity on May 1, 1997. OEHHA has established the safe harbor levels for cadmium: the MADL for cadmium as a chemical known to cause reproductive toxicity is 4.1 micrograms per day if ingested orally. (27 Cal. Code Regs., § 25805, subd. (b).)

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

21. Proposition 65 may be enforced by any person in the public interest who provides notice sixty days before filing suit to both the violator and designated law enforcement officials. A private enforcer may bring suit more than sixty days after notice if no public prosecutor has commenced and is diligently prosecuting an action against the violation. (Health & Saf. Code, §

25249.7, subds. (c), (d)).

STATEMENT OF FACTS

22. Defendants manufactured, imported, sold, and/or distributed the Products containing lead and cadmium without giving a clear and reasonable warning in violation of California Health and Safety Code section 25249.6 *et seq*. Such violations have continued after receipt of the Notice and will continue to occur in the future.

23. Anima Mundi is the owner of the ANIMA MUNDI APOTHECARY trademark under which the Products are sold. The Products' label identifies Anima Mundi's business address, 31 Noble St., Brooklyn, NY 11222, and its website, animamundiherbals.com.

24. Anima Mundi sells the Products directly to consumers in California through its website, animamundiherbals.com, which accepts orders from and ships the Products to California addresses, and through an affiliated retail apothecary in Venice, California. The Products have also been offered for sale to California consumers through third-party retailers, including Amazon.com, Erewhon, and Ulta Beauty.

25. Anima Mundi markets the Products as a "plant-based superfood powder" that is "96% organic," and describes the Products on their label as "THE CLEANEST and MOST DELICIOUS protein-packed, plant-based superfood there ever was." The label directs consumers to "[a]dd 4 Tbsp into your choice of smoothie or food" and identifies a serving size of 4 tablespoons (approximately 33 grams).

26. Samples of the Products from different production lots were tested for lead and cadmium by independent, accredited laboratories. One such sample was purchased directly from Anima Mundi's website after Anima Mundi received the Notice. The results of the testing show that consumption of a single labeled serving of the Products per day exposes consumers to more than 0.5 micrograms of lead and more than 4.1 micrograms of cadmium, exceeding the MADL safe harbor levels for both chemicals in the OEHHA regulations.

27. Defendants knew or, through reasonable diligence, should have known, that consumption of the Products caused exposure to more than 0.5 micrograms of lead and/or more than 4.1 micrograms of cadmium per day. After Anima Mundi received the Notice, Anima Mundi

had actual knowledge of the exposure to lead and cadmium caused by the Products.

28. Indeed, in a judgment dated March 19, 2026, the Marin County Superior Court permanently enjoined Anima Mundi from "offering health supplements containing Lead in California without providing clear and reasonable warnings" in the following form:

> **WARNING**: Consuming this product can expose you to lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to: www.P65Warnings.ca.gov/food.

This warning must be "prominently provided to a consumer prior to completing an internet purchase of health supplements containing lead (Pb) for shipment in or into California and placed conspicuously on the immediate packaging or food product label over the bag of health supplements containing lead (Pb)." (*Blue Sky Forever v. Anima Mundi Herbals LLC* (Super. Ct. Marin County, Mar. 19, 2026, No. CV0007337).)

29. Since at least August 19, 2025, Defendants knowingly and intentionally exposed consumers and individuals in California to lead and cadmium by placing the Products into California commerce for consumer ingestion. Both prior and subsequent to PPA's Notice, Anima Mundi failed to provide a warning on the labels of the Products, on the internet listing page, during the online checkout process, or by any other legally acceptable method. Anima Mundi has, at all times relevant hereto, been aware that the Products contained lead and cadmium and that persons using the Products have been exposed to lead and cadmium. Despite this knowledge, Anima Mundi has failed to warn the public of the presence of lead and cadmium. This failure to warn is ongoing.

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

31. Ongoing exposures create a substantial probability of future statutory violations. There is no other plain, speedy, or adequate remedy at law.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(VIOLATION OF PROPOSITION 65 – AGAINST ALL DEFENDANTS)

32. PPA incorporates by reference each and every allegation contained above.

33. By committing the acts alleged above, Defendants have, in the course of doing business, knowingly and intentionally exposed users of the Products to lead and cadmium, both of

which are known to the State of California to cause birth defects and other reproductive harm, without first giving a clear and reasonable warning to such individuals within the meaning of California Health and Safety Code section 25249.6. In doing so, Defendants have violated California Health and Safety Code section 25249.6 and continue to violate the statute with each successive knowing and intentional exposure without a clear and reasonable warning.

34. Defendants are liable for civil penalties up to $2,500 per day for each violation of Proposition 65 pursuant to California Health and Safety Code section 25249.7(b). Injunctive relief is also appropriate pursuant to California Health and Safety Code section 25249.7(a).

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for relief against Defendants as follows:

1. Civil penalties in the amount of $2,500 per day for each violation according to proof;
2. An injunction against Defendants from selling, offering for sale, distributing and/or otherwise placing the Products into California without either reducing the lead and cadmium levels in the Products such that no Proposition 65 warnings are required or providing clear and reasonable warnings, as PPA shall specify in further application to the Court;
3. Reasonable attorneys' fees and costs of suit pursuant to Code of Civil Procedure section 1021.5 or any other applicable theory; and
4. For such other relief as the Court may deem just and proper.

Respectfully submitted:

DATED: October 9, 2026

EMILY CULBERTSON
AKEMPIS P.C.
Attorneys for Public Protection Alliance LLC

Exhibit A

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

LEAD AND CADMIUM IN PROTEIN POWDER

04/17/2026

This Notice of Violation ("Notice") is provided to you pursuant to and in compliance with California Health and Safety Code § 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act ("Proposition 65"), see the attached summary provided by the Office of Environmental Health Hazard Assessment (copies of summary not provided to public enforcement agencies).
- This Notice is provided by Public Protection Alliance LLC, 2450 Colorado Ave, Suite 100E, Santa Monica CA 90404. Public Protection Alliance is a California company acting in the interest of the general public seeking to further, among other causes, the protection of the environment, toxin reduction, the promotion and improvement of human health, the improvement of consumer rights, and corporate accountability. Public Protection Alliance designates its counsel, Emily Culbertson, as the responsible individual with regard to this Notice.

Description of Violation:

- Violators: The names and addresses of the violators are identified in the table below.
- Time Period of Exposure: The violations have been occurring since at least 08/19/2025 and are continuing to this day.
- Provision of Proposition 65: This Notice covers the warning provision of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemicals involved in these violations are lead and cadmium.
- Type of Product: The specific type of product causing the violation is protein powder. Non-exclusive examples of this specific type of product are listed in the table below.
- Description of Exposure: Ordinary use of the products identified in this Notice results in human exposures to lead and cadmium because lead and cadmium is found in the protein powder. The route of exposure for the violation is ingestion. These exposures occur in homes, workplaces, and everywhere else throughout California where consumers may be exposed to protein powder.

- No clear and reasonable Proposition 65 warning is provided with these products regarding the presence of lead and cadmium in the products.

Violators and Products Subject to this Notice

Names and Addresses of Violators	Non-Exclusive Examples of the Products	UPC or Further Description of the Non-Exclusive Exemplar
Anima Mundi Herbals 7014 13th Ave. Suite 202 Brooklyn NY 11228	Anima Mundi Apothecary Chocolate Protein Superfood Powder	ASIN B0C9V49CDP
FB Select LLC 5 Crosby St. #5A New York, NY 10013	Anima Mundi Apothecary Chocolate Protein Superfood Powder	ASIN B0C9V49CDP
Amazon.com Services LLC 410 Terry Avenue North Seattle, WA 98109	Anima Mundi Apothecary Chocolate Protein Superfood Powder	ASIN B0C9V49CDP

Resolution of Noticed Claims:

- Public Protection Alliance intends to file a citizen enforcement lawsuit against the alleged violators unless such violators agree in a binding written instrument to: (1) recall all products already sold; (2) provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future or reformulate such products to eliminate the lead and cadmium exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code § 25249.7(b).

- Alleged violators should contact Public Protection Alliance through its counsel identified below to discuss resolution of this matter. It should be noted that Public Protection Alliance cannot (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received Public Protection Alliance's 60-day Notice. Therefore, while reaching an agreement with Public Protection Alliance will resolve its claims, such agreement may not satisfy the public prosecutors.

Preservation of Relevant Evidence:

- This notice also serves as a demand that the alleged Violators 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 related to the presence or potential presence of lead and cadmium in protein powder; purchase and sales information for such products; efforts to comply

with Proposition 65 with respect to such products; advertising and marketing material related to such products; testing reports related to such products; communications with any person relating to the presence or potential presence of lead and cadmium in such products; any representative exemplars of any such products sold to customers or consumers by the alleged violator in the year preceding this Notice through the date of any trial of the claims alleged in this Notice.

Request for Names and Contact Information

- The retailer is hereby requested to promptly provide the names and contact information for the manufacturers, producers, packagers, importers, suppliers, and/or distributors of the products identified in this Notice per Cal. Code Regs. tit. 27, §25600.2(g).

Please direct any inquiries regarding this Notice to Public Protection Alliance's counsel, Emily Culbertson, at Akempis PC, 730 Arizona Ave, Floor 2, Santa Monica CA 90401, (424) 433-4760, emilyculbertson@akempis.com.

AKEMPIS P.C.



Emily Culbertson
Attorney for Public Protection Alliance LLC

Enclosures:

Certificate of Merit
Certificate of Service
Appendix A ("The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary") (sent only to the Violators)
Factual information sufficient to establish the basis of the Certificate of Merit (sent only to Attorney General)

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Emily Culbertson, hereby declare:

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

2. I am an attorney with Akempis P.C., and I represent the noticing party, Public Protection Alliance, LLC.

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 violators 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.

04/17/2026



Emily Culbertson
Attorney for Public Protection Alliance LLC

CERTIFICATE OF SERVICE

I, Emily Culbertson, hereby declare:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is 730 Arizona Ave, 2nd Floor, Santa Monica CA 90401 and my email address is emilyculbertson@akempis.com.

On 04/17/2026, I served the following documents on all interested parties in this action by placing a true copy thereof in the manner and at the addresses indicated below:

☒ **BY CERTIFIED MAIL**: I am readily familiar with the practice for collection and processing for correspondence for certified mailing by LetterStream, a printing and mailing company that sends certified mail via the U.S. Postal Service. I transmitted a PDF version of the documents noted below to LetterStream on 04/17/2026 for printing and mailing in the ordinary course of business to the names and addresses on the attached service lists. The printed correspondence will be deposited by LetterStream in the mail with the U.S. Postal Service.

Please see attached service list for recipients sent by Certified Mail.

Contents mailed: NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENVIRONMENT ACT; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENVIRONMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

☒ **BY MAIL:** I am readily familiar with the practice for collection and processing for correspondence for mailing by LetterStream, a printing and mailing company that sends certified mail via the U.S. Postal Service. I transmitted a PDF version of the documents noted below to LetterStream on 04/17/2026 for printing and mailing in the ordinary course of business to the names and addresses on the attached service lists. The printed correspondence will be deposited by LetterStream in the mail with the U.S. Postal Service.

Please see attached service list for recipients sent by Mail.

Contents mailed: NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENVIRONMENT ACT; CERTIFICATE OF MERIT.

☒ **BY ELECTRONIC MAIL**: I transmitted a PDF version of the documents noted below via email to the email address(es) indicated on the attached service list before 5 p.m. on the date executed.

Please see attached service list for recipients sent by Electronic Mail

Contents emailed: NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENVIRONMENT ACT; CERTIFICATE OF MERIT.

☒ **BY ELECTRONIC UPLOAD:** I transmitted a PDF version of the documents noted below to the Office of Attorney General of California via the Proposition 65 File a 60-Day Notice website at https://oag.ca.gov/prop65/add-60-day-notice at before 5 p.m. on the date executed.

Contents uploaded: NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENVIRONMENT ACT; CERTIFICATE OF MERIT; CONFIDENTIAL SUPPORTING EVIDENCE FOR CERTIFICATE OF MERIT.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 04/17/2026 at Los Angeles, California.



Emily Culbertson

SERVICE LIST BY CERTIFIED MAIL:

Anima Mundi Herbals
31 Noble Street
Brooklyn, NY 11222

Anima Mundi Herbals
c/o Registered Agent
United States Corporation Agents, Inc.
7014 13th Avenue
Suite 202
Brooklyn, NY 11228

Amazon.com Services LLC
410 Terry Avenue North
Seattle, WA 98109

FB Select LLC
c/o Registered Agent
Cogency Global Inc
850 New Burton Road
Suite 201
Dover, DE 19904

FB Select LLC
5 Crosby St.
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708 Court Street, #202
Jackson, CA 95642

Butte County DA
25 County Center Drive, Suite 245
Oroville, CA 95965

Colusa County, DA
310 6th Street
Colusa, CA 95932

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

Glenn County DA
P.O. Box 430
Willows, CA 95988

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

Imperial County DA
940 West Main Street, Ste 102
El Centro, CA 92243

Kern County DA
1215 Truxtun Ave.
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Kings County DA
1400 West Lacey Blvd.
Hanford, CA 93230

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Lakeport, CA 95453

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San Bernardino County DA
303 W. Third Street
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San Mateo County DA
400 County Center, Third Floor
Redwood City, CA 94063

Shasta County DA
1355 West Street
Redding, CA 96001

Sierra County DA
100 Courthouse Square
Downieville, CA 95936

Siskiyou County DA
P.O. Box 986
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Solano County DA
675 Texas Street, Suite 4500
Fairfield, CA 94533

Stanislaus County DA
832 12th Street, Suite 300
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Sutter County DA
463 2nd Street, Suite 102
Yuba City, CA 95991

Tehama County DA
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423 N. Washington Street
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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 contaminant[2] it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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[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.