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ENDORSED
FILED
San Francisco County Superior Court

JUN 02 2010

CLERK OF THE COURT
BY: CYNTHIA S. HERBERT
Deputy Clerk

5 Attorneys for Plaintiff
6 AS YOU SOW

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF SAN FRANCISCO

9 AS YOU SOW, a non-profit corporation,

Case No. CGC-09-488391

10 Plaintiff,

11 ^{ca}
[PROPOSED] CONSENT JUDGMENT

12 vs.

13 AMAZON.COM, INC.; AMAZON
14 SERVICES, LLC, AMAZON.COM
INTERNATIONAL, INC. and DOES 1 to
15 100,

16 Defendants.

17 This Consent Judgement is entered into by and between As You Sow ("Plaintiff") and
18 AMAZON.COM, INC.; AMAZON SERVICES, LLC (Defendant) and shall be effective upon
19 entry (the "Effective Date") by the court. AMAZON.COM INTERNATIONAL INC. Is an entity
20 that no longer exists and was improperly named as a defendant in this action. Plaintiff and
21 Defendant (each a "Party" and collectively, "the Parties") agree to the terms and conditions set
22 forth below. This Consent Judgment applies solely to the following products: A to Z Naturals,
23 Wow!, Prenatal, and A to Z Naturals Black Cohosh.

24 1. INTRODUCTION

25 1.1 Plaintiff is a section 501 (c)(3) non-profit corporation dedicated to, among other
26 causes, the production of the environment, the promotion of human health, the improvement of
27

1 human health, the improvement of worker and consumer rights, environmental education, and
2 corporate accountability. Plaintiff is based in San Francisco, California and incorporated under
3 the laws of the State of California.

4 1.2 Through its website located at www.amazon.com, Defendant Amazon.com, Inc.
5 offered for sale certain herbal products finished herbal products for ingestion to California
6 consumers under the A to Z Naturals branded product lines. Plaintiff alleges that certain of the
7 products contain lead, a chemical listed by the State of California as known as to cause cancer
8 and reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of
9 1986 ("Proposition 65"), California Health and Safety Code § 25249.5 et seq.; Title 27,
10 California Code of Regulations § 25000 et seq. For purposes of this Consent Judgment only,
11 each of the products is deemed to be a "food" within the meaning of Title 27, California Code of
12 Regulations § 25501.

13 1.3 The specific products Plaintiff alleges contain lead and which are covered by this
14 Consent Judgment as of the Effective Date are to wit: A to Z Naturals, Wow!, Prenatal A to Z
15 Naturals Black Cohosh (the "Products"). Any products not set forth herein are not subject to the
16 injunctive provisions herein, and are not covered by the release of liability set forth in Section 6
17 herein.

18 1.4 Pursuant to Health & Safety Code § 25249.8: (a) on February 27, 1987, the State
19 of California listed the chemical lead as a chemical; known to cause reproductive toxicity and
20 (b) on October 1, 1992, the State of California listed the chemicals lead and lead compounds as
21 chemicals known to cause cancer.

22 1.5 On February 24, 2009, Plaintiff served on Defendant and each of the appropriate
23 public enforcement agencies "60-Day Notices" that provided Defendant and the public
24 enforcement agencies with a notice alleging that Defendant was in violation of Proposition 65
25 for failing to warn the purchasers and individuals using the Products that the use of the Products
26 exposes them to certain chemicals known to the State of California to cause cancer and/or
27

1 reproductive toxicity (each, a “60-Day Notice”). A copy of each such 60-Day Notice issued to
2 Defendant is attached hereto as Exhibit A. Defendant stipulates for the purpose of this Consent
3 Judgment, only, that the 60-Day Notices sent to it are adequate to comply with Title 27,
4 California Code of Regulations §25903.

5 1.6 On May 13, 2009, Plaintiff filed a Complaint (the “Action”) in San Francisco
6 Superior Court, alleging violations of Proposition 65. Plaintiff brings the Action in the public
7 interest. Plaintiff has provided 60-Day Notice(s) to Defendant and the appropriate public
8 enforcement agencies and none of the public enforcement agencies has commenced and begun
9 diligently prosecuting and action against Defendant for such alleged violations.

10 1.7 For purposes of this Consent Judgment, each party stipulates that venue is proper
11 and that this Court has subject matter jurisdiction over the allegations contained in this action.
12 Defendant stipulates it collectively employs ten (10) or more employees and employed the (10)
13 or more employees for one year prior to the date of the first 60-Day Notice Letter. The parties
14 enter into this Consent Judgment to settle disputed claims between them and to avoid prolonged
15 litigation. By execution of this Consent Judgment, Defendant does not admit any facts,
16 violations of law, conclusion of law, the applicability of Proposition 65, or the applicability or
17 violation of any other law or standard governing warnings or disclosures in connection with the
18 manufacture, packaging, labeling, distribution and/or sale of the Products. Except for the
19 stipulation made in Sections 1.5 and 1.7 by Defendant, nothing in this Consent Judgment shall
20 be construed as an admission by Defendant of any fact, issue of law, conclusion of law,
21 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
22 an admission by Defendant of any fact, issue of law, conclusion of law, or violation of law.
23 Except for the stipulations made in this Section 1.7 by Plaintiff, nothing in this Consent
24 Judgment shall be construed as an admission by Plaintiff of any fact, issue of law, or violation
25 of law, nor shall compliance with this Consent Judgment constitute or be construed as an
26 admission by Plaintiff of any fact, issue of law, conclusion of law, or violation of law.

1 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall
2 prejudice, waive or impair any right, remedy or defense any Party may have in any other or
3 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
4 responsibilities, and duties of any Party to this Consent Judgment. This Consent Judgment is a
5 full and final settlement of all claims that were raised in the Action, or which could have been
6 raised in the Action arising out of the facts or conduct alleged therein. In the unlikely event that
7 Amazon is sued again for violations of Proposition 65 for lead levels in any of the covered
8 products, and they have been in full compliance with this Consent Judgment. As You Sow will
9 take steps to appear and defend the reasonableness of all provisions contained in this Consent
10 Judgment and will defend its *res judicata* effect; however this shall not impose any duty of
11 indemnity or otherwise make pecuniary obligations on the part of AYS.

12 **2. INJUNCTIVE PROVISIONS**

13 2.1 Defendant agrees that it has removed from its website, and will not offer
14 for sale or sell by means of the Amazon.com website the Products A to Z Naturals, Wow!,
15 Prenatal A to Z Natural's Black Cohash into the State of California. In the event such products
16 are inadvertently made available for sale, or are sold into the State of California, Amazon.com
17 agrees to promptly remove any listing for the sale of such products from its website upon
18 receiving written notice from anyone, or becoming aware that such products are being made
19 available for sale on the Amazon.com website. In the event that Plaintiff or its representative
20 becomes aware that these products are being made available for sale into California on
21 Defendant's website, Plaintiff shall give written notice to Amazon.com, Inc.'s Legal
22 Department, P.O. Box 81226, Seattle, WA 98108-1226, Facsimile number (206) 266-7010.
23 Defendant will be deemed in violation of this judgment only if it does not remove the product
24 listings from its website within 10 business days.

25 **3. CIVIL PENALTIES**

26 **3.1 Stipulated Civil Penalties for Future Violations of This Agreement**

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1 Proposition 65 provides for civil penalties of up to \$2500 per violation per day, pursuant
2 to California Health & Safety Code § 25249.7. Should Defendant violate this judgement, they
3 will be liable for said penalties pursuant to California Health & Safety Code Section § 25249.7.

4 **4. REIMBURSEMENT OF FEES AND COSTS**

5 **4.1 Reimbursement of Plaintiff's Investigative Expert and Legal Fees and Costs.**

6 Defendant shall reimburse Plaintiff in the amount of \$6,000 for Plaintiff's reasonable
7 investigative, expert, and legal fees and costs incurred as a result of investigating and
8 negotiating a settlement in the public interest.

9 **5. PAYMENT OBLIGATIONS**

10 5.1 Pursuant to Section 3.2, 3.3 and 4.1 herein, Defendant agrees to remit the total
11 amount of \$6,000 to Plaintiff, payable to "As You Sow" no later than fifteen (15) days after
12 entry of Consent Judgement. In the event any payment owed by Defendant under this Consent
13 Judgment is not remitted to Plaintiff or post-marked on or before its due date, Defendant shall
14 be deemed to be in default of its obligation under this Consent Judgment. Plaintiff shall provide
15 written notice to Defendant of any default; if Defendant fails to remedy the default within two
16 (2) business days of such notice Plaintiffs may seek relief pursuant to 664.6 of the California
17 code of Civil Procedure, including attorney fees and costs.

18 **6. RELEASE OF LIABILITY**

19 **6.1 Release of Liability.** Plaintiff on its own behalf, and on behalf of the general
20 public, waives all rights to institute or participate in, directly or indirectly, any claim or form of
21 legal action against Defendant, its officers, directors, employees, agents, attorneys,
22 representatives, shareholders, parents, subsidiaries, affiliates, divisions, predecessors,
23 successors, subdivisions, downstream distributors, downstream retailers, downstream
24 customers, and upstream suppliers (including manufacturers of the products and manufacturers
25 of the raw materials of the products) under Proposition 65 based upon Defendant's alleged
26 failure to warn, within the meaning of Proposition 65, about exposure to lead in any of the
27

1 Products sold on California or to California consumers on or before sixty (60) days after the
2 Effective Date or based on any other legal claim or theory that was or could have been alleged in
3 the Action based on the facts alleged in the Action.

4 **6.2 Release of Liability of Plaintiff.** Defendant waives all of its rights to institute
5 any claim, or form of legal action against Plaintiff, its officers, directors, employees, agents,
6 attorneys and representatives (the "Plaintiff Releasees") for all actions or statements made or
7 undertaken by the Plaintiff Releasees in the course of seeking enforcement of Proposition 65
8 through the Action.

9 **7. CONSENT JUDGMENT**

10 **7.1 Consent Judgment.** Upon execution of this [Proposed] Consent Judgment by all
11 Parties, Plaintiff shall promptly notice a Motion for Approval & Entry of Consent Judgment in
12 the San Francisco Superior Court pursuant to Title 11, Cal. Code of Regs. §3000, *et seq.* This
13 Motion shall be served upon all of the Parties to the Action and upon the California Attorney
14 General's Office. In the event that the court fails to approve and order entry of the judgment,
15 this Consent Judgment shall become null and void upon the election of any party as to them and
16 upon written notice to all parties to the Action pursuant to the notice provisions herein. If this
17 Consent Judgment becomes null and void, or is not approved by the Court within one hundred
18 and eighty (180) days of its execution by all Parties, Plaintiff shall refund all sums paid by
19 Defendant pursuant to Sections 3.2, 3.3 and 4.1 within fifteen (15) days of written notice to
20 Plaintiff by Defendant that a refund is due. Defendant and Plaintiff shall use best efforts to
21 support entry of this Consent Judgment in the form submitted to the Office of the Attorney
22 General. If the Attorney General objects in writing to any term in this Consent Judgment, the
23 parties shall use best efforts to resolve the concern in a timely manner and prior to the hearing
24 on the motion to approve this Consent Judgment. If the Parties cannot resolve an objection of
25 the Attorney General, then AYS and Defendant shall proceed with seeking entry of an order by
26 the court approving this Consent Judgment in the form originally submitted to the Office of the
27

1 Attorney General, or in such other form as the parties shall mutually agree upon after
2 consideration of any comments of the Attorney General. If the Attorney General elects to file a
3 notice of motion with the court stating that the People shall appear at the hearing for entry of
4 this Consent Judgment so as to oppose entry of the Consent Judgment, then a party may
5 withdraw from this Consent Judgment prior to the date of the hearing, with notice to all parties
6 and the sums paid hereunder shall be returned to Defendant within fifteen (15) days of the date
7 of the notice. If the Attorney General files a notice of appeal of this Consent Judgment, then a
8 party may withdraw from this Consent Judgment within forty-five (45) days of the People's
9 notice of appeal and this Consent Judgment shall be null and void ab initio five (5) days after
10 notice of the withdrawal and any sums paid hereunder shall be returned to Defendant within
11 fifteen (15) day of the date of voiding.

12 **8. ENFORCEMENT AND MODIFICATION**

13 **8.1 Enforcement and Stipulated Civil Penalties.** In the event that a dispute arises
14 with respect to any of the provisions of this Consent Judgment, the Parties shall meet and confer
15 within twenty (20) days after any Party receives written notice of an alleged violation of this
16 Consent Judgment from another Party. In the event the affected Parties cannot resolve the
17 dispute, this Consent Judgment may be enforced pursuant to Code of Civil Procedure § 664.6 or
18 any other valid provision of law. The prevailing party in any dispute regarding compliance with
19 the terms of this Consent Judgment shall be awarded its reasonable fees and costs incurred, in
20 addition to any other relief otherwise ordered by the court, including but not limited to civil
21 penalties assessed pursuant to Section 3 herein.

22 **9. GOVERNING LAW**

23 **9.1 Governing Law.** The terms of this Consent Judgment shall be governed by the
24 laws of the State of California. This Consent Judgment shall not govern Products or products
25 sold to consumers or other persons outside the State of California.

26 **10. NOTICES**

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1 **10.1 Notices.** All correspondence and notices required to be provided under this
2 Agreement shall be in writing and shall be sent by first class registered or certified mail, or via a
3 reputable overnight delivery service with a tracking mechanism, addressed as follows:
4

5 All correspondence to Plaintiff shall be mailed to:

With a copy to:

6 Attn: Lawrence E. Fahn, Executive Director
7 As You Sow
8 311 California Street, Suite 510
9 San Francisco, CA 94104

Mark S. Pollock
Pollock & James, LLP
952 Jefferson Street
Napa, CA 94559

10 All correspondence to Defendants shall be mailed to:

With a copy to:

11 Amazon.com,
12 General Counsel
13 P.O. Box 81226
14 Seattle, WA 98108-1226
15 (206) 266-7010 (fax)

Kathryn Sheehan
P.O. Box 81226
Seattle, WA 98108-1226

16 **11. INTEGRATION & MODIFICATION**

17 **11.1 Integration & Modification.** This Consent Judgment, together with the Exhibits
18 hereto which are specifically incorporated herein by this reference, constitutes the entire
19 agreement between the Parties relating to the rights and obligations herein granted and assumed,
20 and supercedes all prior understandings between the parties. Except as set forth in Section 8,
21 this Consent Judgment may be modified only upon the written agreement of the parties to be
22 bound. If any term of this Consent Judgment is found by the court to be invalid, then such term
23 shall be stricken and the remaining terms shall not be affected thereby. In the interpretation
24 hereof, references to general "Sections" (e.g., "Section 8") shall include all subsections within
25 said section (e.g., Sections 8.1, 8.2 and 8.3), but references to specific subsections (e.g.,
26 "Section 2.2.1") shall refer to that specific subsection.

27 **12. COUNTERPARTS**

28 **12.1 Counterparts.** This Consent Judgment may be executed in counterparts, each of
29 which shall be deemed an original, and all of which, when taken together, shall constitute one

1 and the same document.

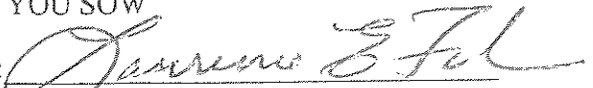
2 13. AUTHORIZATION

3 13.1 Authorization. The undersigned are authorized to execute this Agreement on
4 behalf of their respective parties and have read, understood, and agree to all of the terms and
5 conditions of this Agreement.

6 IT IS SO STIPULATED.

7
8 DATED: 1/21/2010

AS YOU SOW

By: 
Lawrence E. Fahn
Executive Director

10
11 DATED: _____

AMAZON.COM

By: SEE NEXT PAGE

13
14
15
16 DATED: _____

AMAZON SERVICES, LLC

By: SEE NEXT PAGE

18
19
20
21 IT IS SO ORDERED.
22 DATED: _____

Judge of the Superior Court

23 EXHIBIT A - Notice of Proposition 65 Violations



24
25
26
27
28

1 and the same document.

2 13. AUTHORIZATION

3 13.1 Authorization. The undersigned are authorized to execute this Agreement on
4 behalf of their respective parties and have read, understood, and agree to all of the terms and
5 conditions of this Agreement.

6 IT IS SO STIPULATED.

7 AS YOU SOW

8 DATED : _____

By: SEE PAGE 9
Lawrence E. Fahn
Executive Director

10

AMAZON.COM, Inc.

11 DATED: 1/26/2010

By: [Signature]
VP, Legal

12

13

14

AMAZON SERVICES, LLC

15

16 DATED: 1/26/2010

By: [Signature]
Assistant Secretary

17

18

19

20

IT IS SO ORDERED.

21

DATED: JUN 02 2010

Peter J. Busch
Judge of the Superior Court

22

23 EXHIBIT A - Notice of Proposition 65 Violations

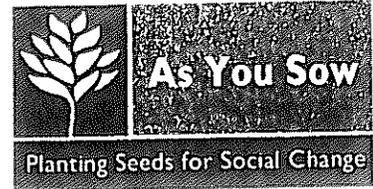
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28



February 24, 2009

311 California Street, Suite 510
San Francisco, CA 94104
T 415.391.3212
F 415.391.3245
www.asyousow.org

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violators covered by this notice are **AMAZON.COM, AMAZON.COM, INC., AMAZON SERVICES, LLC., and AMAZON.COM INTERNATIONAL, INC.** (collectively "Amazon").

Chemicals. These violations involve exposures to lead and lead compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by Amazon. The phrase "traditional patent medicines" above is used herein as defined by the California Department of Health Services: "herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and liquids." The products that are the subject of this notice include but are not limited to the

EXHIBIT A

following:

<u>Product</u>		<u>Chemical</u>
A TO Z NATURALS	WOW! PRENATAL	lead and lead compounds
A TO Z NATURALS	BLACK COHOSH	lead and lead compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

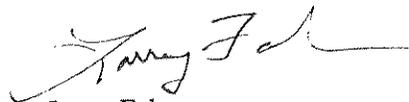
Duration of violations. Each of these ongoing violations has occurred on every day for at least February 24, 2008, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Mark S. Pollock
Pollock & James, Attorneys at Law
952 Jefferson Street
Napa, CA 94559
Tel: 707-257-3089 Fax: 707-257-3096

Very truly yours,



Larry Fahn
Executive Director

Enclosure

CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on Amazon.com, Amazon.com, Inc. and Amazon Services, LLC, and Amazon.com International, Inc.)

I, Mark S. Pollock, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

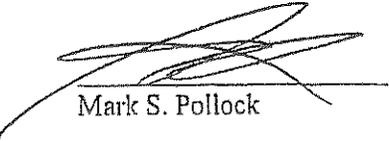
2. I am an attorney for the noticing party.

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 chemicals that are 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 plaintiffs' case can be established and that 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 §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: 02/23/09


Mark S. Pollock

Attachments (for Attorney General copy only)

(1) An action is deemed to have been "commenced more than sixty days after the person has given notice" where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixtieth day" shall be extended to the next day which is not a "holiday".

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

HISTORY

1. New section and Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

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 Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into 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 enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.

FOR FURTHER INFORMATION. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, CA 94104.

On February 24, 2009, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

David Tennenhouse, CEO
Amazon.com, Inc.
1200 12th Avenue S, Suite 1200
Seattle, WA 98144-2734

Jeffrey Bezos, Chairman
Amazon.com, Inc. and
Amazon.com International, Inc.
1200 12th Avenue S, Suite 1200
Seattle, WA 98144-2734

Tom Szkutak, CEO
Amazon Services, LLC
1200 12th Avenue S, Suite 1200
Seattle, WA 98144-2734

On February 24, 2009, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Ed Weil, Deputy Attorney General
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, CA 94612

On February 24, 2009, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on February 24, 2009, at San Francisco, California.


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

AMADOR COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

COLUSA COUNTY DISTRICT ATTORNEY
547 MARKET ST STE 102
COLUSA CA 95932

CONTRA COSTA COUNTY DISTRICT
ATTORNEY
725 COURT ST 4TH FLR
MARTINEZ CA 94553

DEL NORTE COUNTY DISTRICT ATTORNEY
450 H ST STE 171
CRESCENT CITY CA 95531

EL DORADO COUNTY DISTRICT ATTORNEY
515 MAIN ST
PLACERVILLE CA 95667

FRESNO COUNTY DISTRICT ATTORNEY
2220 TULARE ST STE 1000
FRESNO CA 93721

GLENN COUNTY DISTRICT ATTORNEY
PO BOX 430
WILLOWS CA 95988

HUMBOLDT COUNTY DISTRICT ATTORNEY
825 FIFTH ST
EUREKA CA 95501

IMPERIAL COUNTY DISTRICT ATTORNEY
940 W MAIN ST
EL CENTRO CA 92243

INYO COUNTY DISTRICT ATTORNEY
PO BOX D
INDEPENDENCE CA 93526

KERN COUNTY DISTRICT ATTORNEY
1215 TRUXTUN AVE
BAKERSFIELD CA 93301

KINGS COUNTY DISTRICT ATTORNEY
1400 W LACEY BLVD
HANFORD CA 93230

LAKE COUNTY DISTRICT ATTORNEY
255 N FORBES ST
LAKEPORT CA 95453

LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

L A COUNTY DISTRICT ATTORNEY
210 W TEMPLE ST STE 18000
LOS ANGELES CA 90012-3210

MADERA COUNTY DISTRICT ATTORNEY
209 W YOSEMITE AVE
MADERA CA 93637

MARIN COUNTY DISTRICT ATTORNEY
3501 CIVIC CTR DR RM 130
SAN RAFAEL CA 94903

MARIPOSA COUNTY DISTRICT ATTORNEY
PO BOX 730
MARIPOSA CA 95338

MENDOCINO COUNTY DISTRICT
ATTORNEY
PO BOX 1000
UKIAH CA 95482

MERCED COUNTY DISTRICT ATTORNEY
2222 M ST
MERCED CA 95340

MODOC COUNTY DISTRICT ATTORNEY
204 S COURT ST RM 202
ALTURAS CA 96101-4020

MONO COUNTY DISTRICT ATTORNEY
PO BOX 617
BRIDGEPORT CA 93517

MONTEREY COUNTY DISTRICT ATTORNEY
PO BOX 1131
SALINAS CA 93902

NAPA COUNTY DISTRICT ATTORNEY
931 PARKWAY MALL
NAPA CA 94559

NEVADA COUNTY DISTRICT ATTORNEY
201 CHURCH ST STE 8
NEVADA CITY CA 95959

ORANGE COUNTY DISTRICT ATTORNEY
401 CIVIC CTR DR WEST
SANTA ANA CA 92701

PLACER COUNTY DISTRICT ATTORNEY
11562 B AVE
AUBURN CA 95603

PLUMAS COUNTY DISTRICT ATTORNEY
520 MAIN ST RM 404
QUINCY CA 95971

RIVERSIDE COUNTY DISTRICT ATTORNEY
4075 MAIN ST
RIVERSIDE CA 92501

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SACRAMENTO COUNTY DISTRICT
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SACRAMENTO CA 95814

SAN BENITO COUNTY DISTRICT ATTORNEY
419 FOURTH ST, FL 2
HOLLISTER CA 95023

SAN BERNARDINO COUNTY DISTRICT
ATTORNEY
316 N MTN VIEW AVE
SAN BERNARDINO CA 92415-0004

SAN DIEGO COUNTY DISTRICT ATTORNEY
330 W BROADWAY
SAN DIEGO CA 92101

SAN FRANCISCO COUNTY DISTRICT
ATTORNEY
850 BRYANT ST RM 325
SAN FRANCISCO CA 94103

SAN JOAQUIN COUNTY DISTRICT
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STOCKTON CA 95201-0990

SAN LUIS OBISPO COUNTY DISTRICT
ATTORNEY
CITY GOVERNMENT CTR, 4TH FLR
SAN LUIS OBISPO CA 93408

SAN MATEO COUNTY DISTRICT ATTORNEY
400 COUNTY CTR FL 3
REDWOOD CITY CA 94063

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ATTORNEY
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SANTA BARBARA CA 93101

SANTA CLARA COUNTY DISTRICT
ATTORNEY
70 W HEDDING ST WEST WING
SAN JOSE CA 95110

SANTA CRUZ COUNTY DISTRICT
ATTORNEY
701 OCEAN ST RM 200
SANTA CRUZ CA 95060

SHASTA COUNTY DISTRICT ATTORNEY
1525 COURT ST FL 3
REDDING CA 96001

SIERRA COUNTY DISTRICT ATTORNEY
PO BOX 457
DOWNIEVILLE CA 95936

SISKIYOU COUNTY DISTRICT ATTORNEY
PO BOX 986
YREKA CA 96097

SOLANO COUNTY DISTRICT ATTORNEY
675 TEXAS ST STE 4500
FAIRFIELD CA 94533

SONOMA COUNTY DISTRICT ATTORNEY
600 ADMINISTRATION DR RM 212-J
SANTA ROSA CA 95403

STANISLAUS COUNTY DISTRICT
ATTORNEY
PO BOX 442
MODESTO CA 95353

SUTTER COUNTY DISTRICT ATTORNEY
446 SECOND ST
YUBA CITY CA 95991

TEHAMA COUNTY DISTRICT ATTORNEY
PO BOX 519
RED BLUFF CA 96080

TRINITY COUNTY DISTRICT ATTORNEY
PO BOX 310
WEAVERVILLE CA 96093

TULARE COUNTY DISTRICT ATTORNEY
221 S MOONEY BLVD RM 224
VISALIA CA 93291

TUOLUMNE COUNTY DISTRICT ATTORNEY
423 N WASHINGTON ST
SONORA CA 95370

VENTURA COUNTY DISTRICT ATTORNEY
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VENTURA CA 93009

YOLO COUNTY DISTRICT ATTORNEY
301 SECOND ST
WOODLAND CA 95695

YUBA COUNTY DISTRICT ATTORNEY
215 FIFTH ST
MARYSVILLE CA 95901

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800 CITY HALL EAST
200 N MAIN ST
LOS ANGELES CA 90012

SAN DIEGO CITY ATTORNEY'S OFFICE
CIVIC CENTER PLAZA
1200 THIRD AVE STE 1620
SAN DIEGO CA 92101

SAN JOSE CITY ATTORNEY'S OFFICE
200 E SANTA CLARA ST FL 6
SAN JOSE CA 95113

SAN FRANCISCO CITY ATTORNEY'S
OFFICE
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SAN FRANCISCO, CA 94102