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JASON S. HARTLEY
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SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING
WATER AND TOXIC ENFORCEMENT ACT OF 1986
(Cal Health & Saf. Code §§ 25249.5 *et seq.*) (“Proposition 65”)

May 24, 2006

TalkingRain Beverage Company
CEO Doug McLean
P.O. Box 549
30520 SE 84th St.
Preston, Washington 98050

AND THE PUBLIC PROSECUTORS LISTED ON THE ATTACHED CERTIFICATE OF SERVICE

Re: Consumer Product Exposure to Benzene

To Whom It May Concern:

This letter constitutes notice that TalkingRain Beverage Company. (“TalkingRain”) has violated and continues to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §§ 25249.5 *et seq.* (“Proposition 65”). Specifically, this entity has violated and continues to violate the warning requirement of § 25249.6 of the California Health and Safety Code, which provides, “[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...” This notice satisfies a prerequisite for Tessa Huenis to commence an action against TalkingRain in any Superior Court of California to enforce Proposition 65. The violations addressed by this notice have occurred, based on information and belief, in every county in California. Tessa Huenis is serving this notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for every county where the alleged violations occurred, and the City Attorney for every city with a population (according to the most recent decennial census) of over 750,000 persons located within counties where the alleged violations occurred.

By serving this notice, Tessa Huenis is acting “in the public interest” pursuant to Proposition 65. TalkingRain may contact Tessa Huenis, 5264 Quaker Hill Lane, San Diego California 92130, telephone number (619) 235-4040 through her attorneys, Jason Hartley, Esq.,

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550 West B St., Suite 400, San Diego, CA 92101, telephone number (619) 557-4331, and additional undersigned counsel.

Attached to this Notice is a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.” This summary provides general information about Proposition 65.

For at least the past year, and continuing to the present, TalkingRain and/or its predecessor entity or entities have caused consumer product exposure to the carcinogen benzene. Benzene was listed by the Governor of the State of California as a chemical known to the State of California to cause cancer or reproductive toxicity and has been so listed for more than twelve months. Specifically, TalkingRain sells TalkingRain brand soft drinks, including TalkingRain Orange Mango, TalkingRain Pink Grapefruit and TalkingRain Black Raspberry, which contain benzene, to retailers and consumers throughout California. Specifically, these products contain both Vitamin C and sodium benzoate, which has been known to the soft drink industry since at least 1990 to react in beverages to form benzene. The principal route of exposure to benzene is through ingestion of the product as a ready to consume beverage. The location of the alleged exposures are varied, occurring within the 58 counties of the state of California

Accordingly, TalkingRain, which has ten or more employees, has knowingly and intentionally exposed, and continues to expose, California consumers to concentrations of benzene that exceed safe harbor levels without first providing clear and reasonable warnings as required by Proposition 65. TalkingRain was and is required to provide clear and reasonable warnings to all consumers of TalkingRain brand beverages stating that TalkingRain Orange Mango, TalkingRain Pink Grapefruit and TalkingRain Black Raspberry brand beverages contain chemicals known to the State of California to cause cancer.

Pursuant to Health and Safety Code §25249.7(d)(1), the undersigned counsel hereby include the attached Certificate of Merit, which states that the undersigned counsel have consulted with one or more persons with relevant and appropriate experience or expertise who has or have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of this notice, and that, based on that information, the undersigned counsel believe there is a reasonable and meritorious case. Factual information sufficient to establish the basis of this Certificate of Merit is included with the notice that is served on the Attorney General and is provided to that office in confidence and is not to be disclosed except according to law.

Through this notice, Tessa Huenis provides TalkingRain and the appropriate government authorities notice of her intent to sue 60 days prior to the commencement of an action. In the absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, Tessa Huenis may file suit.

Sincerely,


Jason S. Hartley
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550 West B Street, Suite 400
San Diego, CA 92101
Tel: (619) 235-4040

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Olen Kenneth Dodd
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Tel: (409) 832-2589

cc:

Attachments

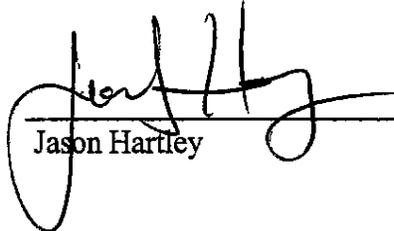
CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Jason Hartley, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged 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 plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 24, 2006

By: 
Jason Hartley

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 550 West B Street, Suite 400, San Diego, CA 92101. On December 6, 2005, I served a copy of the following documents described as follows:

- **NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 DATED 5/24/06 TO See Attached Distribution List FROM Jason Hartley, Esq.**
- **THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to alleged violators)**
- **CERTIFICATE OF MERIT – (attachments only sent to California Attorney General’s Office)**

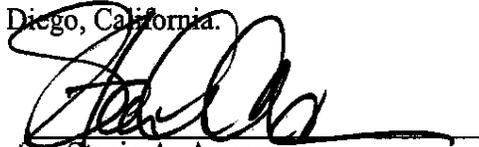
_____ BY FACSIMILE TRANSMISSION (C.R.C. Rule 2008): At the time of transmission I was at least 18 years of age and not a party to this legal proceeding. I am "readily familiar" with the firm's practice of sending and receiving facsimile documents for service of process. Under that practice, the document(s) were caused to be sent to the parties via facsimile machine.

 X VIA U.S. MAIL (C.C.P. §1013a(1) and (3)): I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business. A true and correct copy thereof was enclosed in sealed envelope(s) and addressed as follows.

_____ BY OVERNIGHT DELIVERY MAIL (C.C.P. §1013(c)): I am readily familiar with the practice of this firm for collection and processing of correspondence for mailing by FedEx. Pursuant to this practice, correspondence would be deposited in the a FedEx pickup location in San Diego, California in the ordinary course of business on the date of this declaration. A true and correct copy thereof was enclosed in sealed envelope(s) and addressed as follows.

SEE ATTACHED DISTRIBUTION LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 25, 2006, at San Diego, California.



Stacie A. Agnew

DISTRIBUTION LIST

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<p>The Honorable Thomas Orloff District Attorney ALAMEDA COUNTY 1225 Fallon Street, Room 900 Oakland, CA 94612</p>	<p>The Hon. William Richmond District Attorney ALPINE COUNTY P.O. Box 248 Markleeville, CA 96120</p>	<p>The Honorable Todd Riebe District Attorney AMADOR COUNTY 708 Court Street, #202 Jackson, CA 95642</p>
<p>The Honorable Michael Ramsey District Attorney BUTTE COUNTY 25 County Center Drive Oroville, CA 95965</p>	<p>The Honorable Jeffrey Tuttle District Attorney CALAVERAS COUNTY 891 Mountain Ranch Road San Andreas, CA 95249</p>	<p>The Honorable John Poyner District Attorney COLUSA COUNTY 547 Market Street Colusa, CA 95932</p>
<p>The Honorable Robert Kochly District Attorney CONTRA COSTA COUNTY PO Box 670 Martinez, CA 94553</p>	<p>The Honorable Michael Riese District Attorney DEL NORTE COUNTY 450 H Street Crescent City, CA 95531</p>	<p>The Honorable Gary Lacy District Attorney HUMBOLDT COUNTY 825 5th Street Eureka, CA 95501</p>
<p>The Honorable Elizabeth Egan District Attorney FRESNO COUNTY 2220 Tulare Street. #1000 Fresno, CA 93721</p>	<p>The Hon. Robert Holzapfel District Attorney GLENN COUNTY P.O. Box 430 Willow, CA 95988</p>	<p>The Honorable Paul Gallegos District Attorney HUMBOLDT COUNTY 825 5th Street Eureka, CA 95501</p>
<p>The Honorable Gilbert Otero District Attorney IMPERIAL COUNTY 939 West Main Street El Centro, CA 92243</p>	<p>The Honorable Arthur Maillet District Attorney INYO COUNTY P.O. Drawer D Independence, CA 93526</p>	<p>The Honorable Edward Jagels District Attorney KERN COUNTY 1215 Truxtun Avenue Bakersfield, CA 93301</p>
<p>The Honorable Ronald Calhoun District Attorney KINGS COUNTY 1400 West Lacey Blvd. Hanford, CA 93230</p>	<p>The Honorable Gerhard Luck District Attorney LAKE COUNTY 255 N. Forbes Street Lakeport, CA 95453</p>	<p>The Honorable Robert Burns District Attorney LASSEN COUNTY 220 S. Lassen Street, Ste. 8 Susanville, CA 96130</p>
<p>The Honorable Steve Cooley District Attorney LOS ANGELES COUNTY 210 West Temple Street, Ste. 18000 Los Angeles, CA 90012</p>	<p>The Honorable Ernest LiCalsi District Attorney MADERA COUNTY 209 West Yosemite Avenue Madera, CA 93637</p>	<p>The Honorable Edward Berberian District Attorney MARIN COUNTY 3501 Civic Center Drive, Rm. 130 San Rafael, CA 94903</p>
<p>The Honorable Robert Brown District Attorney MARIPOSA COUNTY P.O. BOX 730 Mariposa, CA 95338</p>	<p>The Hon. Norman Vroman District Attorney MENDOCINO COUNTY P.O. Box 1000 Ukiah, CA 95482</p>	<p>The Honorable Gordon Spencer District Attorney MERCED COUNTY 2222 M Street Merced, CA 95340</p>

The Honorable Jordan Funk District Attorney MODOC COUNTY 204 S. Court Street Alturas, CA 96101	The Hon. George Booth District Attorney MONO COUNTY P.O. BOX 617 Bridgeport, CA 93517	The Honorable Dean Flippo District Attorney MONTEREY COUNTY 240 Church Street, #101 Salinas, CA 93901
The Honorable Gary Lieberstein District Attorney NAPA COUNTY 931 Parkway Mall Napa, CA 94559	The Hon. Michael Ferguson District Attorney NEVADA COUNTY 201 Church Street, Suite 8 Nevada City, CA 95959	The Honorable Tony Rackauckas District Attorney ORANGE COUNTY 401 Civic Center Drive Santa Ana, CA 92701
The Honorable Bradford Fenocchio District Attorney PLACER COUNTY 11562 B Avenue Auburn, CA 95603	The Hon. Jeff Cunan District Attorney PLUMAS COUNTY 520 Main Street, Room 404 Quincy, CA 95971	The Honorable Grover Trask II District Attorney RIVERSIDE COUNTY 4075 Main Street Riverside, CA 92501
The Honorable Jan Scully District Attorney SACRAMENTO COUNTY 901 G Street Sacramento, CA 95814	The Hon. John Sarsfield District Attorney SAN BENITO COUNTY 419 4 th Street, Second Floor Hollister, CA 95023-3801	The Honorable Michael Ramos District Attorney SAN BERNARDINO COUNTY 316 N. Mountain View Avenue San Bernardino, CA 92415
The Honorable Bonnie Dumanis District Attorney SAN DIEGO COUNTY 330 W. Broadway, STE. 1320 San Diego, CA 92101	The Hon. Kamal Harris District Attorney SAN FRANCISCO COUNTY 880 Bryant Street, Room 325 San Francisco, CA 94103	The Honorable James Willett District Attorney SAN JOAQUIN COUNTY P.O. BOX 990 Stockton, CA 95201
The Honorable Gerald She District Attorney SAN LUIS OBISPO COUNTY County Govt. Center, 4 th FL Annex San Luis Obispo, CA 93408	The Hon. James Fox District Attorney SAN MATEO COUNTY 400 County Center, 3 rd Floor Redwood City, CA 94063	The Hon. Thomas Sneddon, Jr. District Attorney SANTA BARBARA COUNTY 1105 Santa Barbara Street Santa Barbara, CA 93101
The Honorable George Kennedy District Attorney SANTA CLARA COUNTY West Hedding Street, West Wing San Jose, CA 95110	The Hon. Bob Lee District Attorney SANTA CRUZ COUNTY 701 Ocean Street, Room 200 Santa Cruz, CA 95060	The Honorable Gerald Benito District Attorney SHASTA COUNTY 1525 Court Street, Third Floor Redding, CA 96001-1632
The Honorable Lawrence Allen District Attorney SIERRA COUNTY, Courthouse P.O. BOX 457 Downieville, CA 95936	The Hon. James Andrus District Attorney SISKIYOU COUNTY P.O. BOX 986 Yreka, CA 96097	The Honorable David Paulson District Attorney SOLANO COUNTY 675 Texas Street, Suite 4500 Fairfield, CA 94533

<p>The Honorable Stephan Passalecqua District Attorney SONOMA COUNTY 600 Administration Drive Room 2121 Santa Rosa, CA 95403</p>	<p>The Hon. James Brazelton District Attorney STANISLAUS COUNTY 800 11th Street, Room 200 P.O. Box 442 Modesto, CA 95353</p>	<p>The Honorable Carl Adams District Attorney SUTTER COUNTY 446 Second Street Yuba City, CA 95991</p>
<p>The Honorable Gregg Cohen District Attorney TEHAMA COUNTY 423 No. Washington Street Sonora, CA 95370</p>	<p>The Hon. David Cross District Attorney TRINITY COUNTY P.O. BOX 1310 Weaverville, CA 96093</p>	<p>The Honorable Phillip Cline District Attorney TULARE COUNTY 221 South Mooney Blvd., Ste 224 Visalia, CA 93921</p>
<p>The Hon. Donald Segerstrom, Jr. District Attorney TUOLUMNE COUNTY 423 No. Washington Street Sonoma, CA 95370</p>	<p>The Hon. Gregory Totten District Attorney VENTURA COUNTY 800 South Victoria Avenue Ventura, CA 93009</p>	<p>The Honorable David Henderson District Attorney YOLO COUNTY 301 Second Street Woodland, CA 95695</p>
<p>The Honorable Patrick McGrath District Attorney YUBA COUNTY 215 Fifth Street Marysville, CA 95901</p>	<p>The Hon. Rockard Delgadillo City Attorney CITY OF LOS ANGELES 200 N. Main Street Los Angeles, CA 90012</p>	<p>The Honorable Michael Aquirre City Attorney CITY OF SAN DIEGO 1200 Third Avenue, 3rd Floor San Diego, CA 92101</p>
<p>The Honorable Dennis Herrera City Attorney CITY OF SAN FRANCISCO City Hall, Room 234 San Francisco, CA 94102</p>	<p>The Hon. Richard Doyle City Attorney CITY OF SAN JOSE 151 W. Mission St. San Jose, CA 95110</p>	<p>Attorney General of California Prop. 65 Enforcement Reporting Attention: Prop. 65 Coordinator 1515 Clay Street, Suite 2000 P.O. Box 70550 Oakland, CA 94612-0550</p>
<p>TalkingRain Beverage Company CEO Doug McLean PO Box 549 Preston, Washington 98050</p>	<p>TalkingRain Beverage Company CEO Doug McLean 30520 SE 84th Preston, Washington 98050</p>	