

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Titanium Dioxide in Spray On Sunscreens

February 15, 2013

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

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

Description of Violation:

- Violators: The names and addresses of the violators are listed on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least September 2, 2012, and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation 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 chemical involved in these violations is titanium dioxide. Exposures to titanium dioxide occur from use of the products identified in this Notice.
- Types of Products: The specific types of products causing this violation are spray on sunscreens that contain titanium dioxide. Non-exclusive examples of these specific types of products are listed on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to titanium dioxide. Use of the products identified in this Notice results in human exposures to titanium dioxide. The products contain titanium dioxide in the form of airborne, unbound particles of respirable size. The route of exposure for the violations is inhalation by consumers (including children). Inhalation occurs when titanium dioxide is released from the products into the ambient environment. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of titanium dioxide.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each of the alleged violators unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2)

provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the titanium dioxide exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any of the alleged violators is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH 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 CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this Notice to CEH through its counsel Mark N. Todzo (mtodzo at lexlawgroup.com) at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800.

EXHIBIT 1
February 15, 2013 Notice of Violation
Titanium Dioxide in Spray On Sunscreens

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<p style="text-align: center;">AHAVA N.A., LLC 411 5th Avenue New York, NY 10016</p>	<p style="text-align: center;">AHAVA Mineral Suncare Sun Protection Anti-Aging Spray SPF 30</p>	<p style="text-align: center;">UPC No. 6-97045-00167-5 SKU No. 7590370</p>
<p style="text-align: center;">Amazon.com, Inc. 410 Terry Avenue North Seattle, WA 98109</p>	<p style="text-align: center;">Aviator Spray On Sunscreen SPF 29</p>	<p style="text-align: center;">SKU No. X0008IS2H3</p>
<p style="text-align: center;">Aviator Skin and Hair LLC #417 - 1515 15th Street NW Washington, DC 20005</p>	<p style="text-align: center;">Aviator Spray On Sunscreen SPF 29</p>	<p style="text-align: center;">SKU No. X0008IS2H3</p>
<p style="text-align: center;">Children's Healthcare Research Group, LLC 254 Hornbine Road Rehoboth, MA 02769</p> <p style="text-align: center;">1504 Breakers West Blvd. West Palm Beach, FL 33411</p>	<p style="text-align: center;">Baby Blanket Minerals Simply Pure Baby Continuous Spray Lotion SPF 70+</p>	<p style="text-align: center;">SKU No. 0-50778-80570-3 Item No. 6980571</p>
<p style="text-align: center;">Quidsi, Inc. 10 Exchange Place, 25th Floor Jersey City, NJ 07302</p>	<p style="text-align: center;">Soleil Organique 100% Mineral Sunblock Mist SPF 45 for Children</p>	<p style="text-align: center;">UPC No. 7-53182-13612-7</p>
<p style="text-align: center;">Toys "R" Us-Delaware, Inc. One Geoffrey Way Wayne, NJ 07470</p>	<p style="text-align: center;">Baby Blanket Minerals Simply Pure Baby Continuous Spray Lotion SPF 70+</p>	<p style="text-align: center;">SKU No. 0-50778-80570-3 Item No. 6980571</p>

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<p>Zappos.com, Inc. 2280 Corporate Circle Suite 100 Henderson, NV 89074</p>	<p>AHAVA Mineral Suncare Sun Protection Anti-Aging Spray SPF 30</p>	<p>UPC No. 6-97045-00167-5 SKU No. 7590370</p>

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

I, Mark N. Todzo, hereby declare:

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

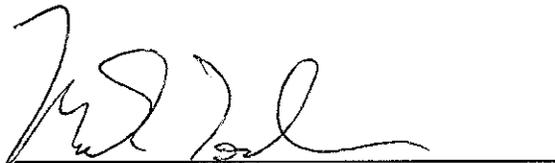
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on 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 the 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 & 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.

February 15, 2013



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

I declare that:

I am employed in San Francisco County, California; my business address is 503 Divisadero Street, San Francisco, California 94117. I am over the age of 18 years and not a party to the within cause and my electronic notification address is cfisher@lexlawgroup.com.

On February 15, 2013, I served true copies of the following documents:

NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;

CERTIFICATE OF MERIT; and

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to those on service list marked with an asterisk).

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

Please see attached service list.

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses set forth below at 2:06 P.m. on February 15, 2013:

Lon Wixson, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
lwixson@contracostada.org

Karyn Sinunu-Towery,
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Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110
epu@da.sccgov.org

Birgit Fladager, District Attorney
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832 12th Street, Ste. 300
Modesto, CA 95354
Prop65@standa.org

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CEPD@countyofnapa.org

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230 Church Street, Bldg. 2
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600 Administration Drive, Rm. 212J
Santa Rosa, CA 95403
jbarnes@sonoma-county.org

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221 S. Mooney Avenue, Rm. 224
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Gregory D. Totten, District Attorney Ventura
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800 South Victoria Avenue
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daspecialops@ventura.org

Paul E. Zellerbach, District Attorney
Riverside County
4075 Main Street
Riverside, CA 92501
Prop65@rivcoda.org

The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on February 15, 2013, at San Francisco, California.

Signed: 
Casey Fisher

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SERVICE LIST

District Attorney of Alameda County
1225 Fallon Street, Rm. 900
Oakland, CA 94612

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Amador County
708 Court Street, Ste. 202
Jackson, CA 95642

District Attorney of Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

District Attorney of Calaveras
County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney of Colusa County
547 Market Street, Ste. 102
Colusa, CA 95932

District Attorney of Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney of El Dorado
County
515 Main Street
Placerville, CA 95667

District Attorney of Fresno County
2220 Tulare Street, Ste. 1000
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825 5th Street
Eureka, CA 95501

District Attorney of Imperial County
939 Main Street, Ste. 102
El Centro, CA 92243

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1215 Truxtun Avenue
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District Attorney of Kings County
1400 West Lacey Blvd.
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Los Angeles, CA 90012-3210

District Attorney of Madera County
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District Attorney of Placer County
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240
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Los Angeles, CA 90012

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San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

California Attorney General's Office
Attention: Proposition 65
Coordinator and Robert Thomas
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550

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Fairfield, CA 94533

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