

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Titanium Dioxide in Spray On Sunscreens

April 12, 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. The route of exposure for the violations is inhalation by consumers (including children). Inhalation occurs when the products are sprayed, thereby releasing the titanium dioxide 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
April 12, 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>1st Chair Skin Care, Inc. dba Ariva Skin Care & Day Spa, Inc. 3940 Route 251 Suite C-7 Peru, IL 61354</p>	<p>Avène Moderate Protection Spray SPF 20</p>	<p>SKU No. 6-73914-02009-1</p>
<p>Astral Health & Beauty, Inc. 3715 Northside Parkway Building 200, Suite 200 Atlanta, GA 30327</p> <p>CosMedix, LLC 3715 Northside Parkway Building 200, Suite 200 Atlanta, GA 30327</p>	<p>CosMedix Reflect SPF 30 Natural Sunscreen</p>	<p>SKU No. 8-78147-00881-0</p>
<p>Pierre Fabre Dermo-Cosmetique USA, Inc. 9 Campus Drive, Second Floor Parsippany, NJ 07054</p>	<p>Avène Moderate Protection Spray SPF 20</p>	<p>SKU No. 6-73914-02009-1</p>
<p>Sheer Miracle, LLC 3658 W. Butler Street Chandler, AZ 85226</p>	<p>Sheer Miracle SPF 29 Mineral Sunscreen Spray</p>	<p>SKU No. MSS</p>
<p>Skin1, Inc. 680 North Lake Shore Drive Suite 101 Chicago, IL 60611</p>	<p>CosMedix Reflect SPF 30 Natural Sunscreen</p>	<p>SKU No. 0-50778-80570-3 Item No. 6980571</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.

April 12, 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 jbanister@lexlawgroup.com.

On April 12, 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 2:29 p.m. on April 12, 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
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Birgit Fladager, District Attorney
Stanislaus County
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Prop65@standa.org

Gary Lieberstein, District Attorney
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Stephan R. Passalacqua, District Attorney
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jbarnes@sonoma-county.org

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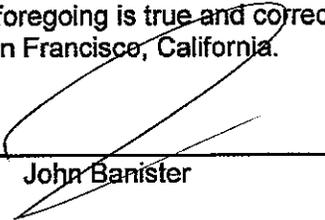
Gregory D. Totten, District Attorney Ventura
County
800 South Victoria Avenue
Ventura, CA 93009
daspecialops@ventura.org

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 April 12, 2013, at San Francisco, California.

Signed: _____


John Banister

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
Fresno, CA 93721

District Attorney of Glenn County
P.O. Box 430
Willows, CA 95988

District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501

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

District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526

District Attorney of Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney of Kings County
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney of Lassen County
220 S. Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney of Los Angeles
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Los Angeles, CA 90012-3210

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Mariposa, CA 95338

District Attorney of Mendocino
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Ukiah, CA 95482

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2222 "M" Street
Merced, CA 95340

District Attorney of Modoc County
204 S. Court Street, Rm. 202
Alturas, CA 96101-4020

District Attorney of Mono County
P.O. Box 617
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District Attorney of Nevada County
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Nevada City, CA 95959

District Attorney of Orange
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Santa Ana, CA 92701

District Attorney of Placer County
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240
Roseville, CA 95678

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Quincy, CA 95971

District Attorney of Sacramento
County
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Sacramento, CA 95814

District Attorney of San Benito
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Hollister, CA 95023

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301 Second Street
Woodland, CA 95695

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215 Fifth Street
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Rm. 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 Third Avenue, Ste. 1620
San Diego, CA 92101

San Francisco City Attorney's
Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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

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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