

# 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

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**Date:** May 22, 2014

**To:**

<b>VIOLATORS</b>	<b>PUBLIC AGENCIES</b>
President, owner, or CEO AZTOPSEL 391 Caribe Way San Jose, CA 95133	California's Attorney General's Office
Amazon.com, Inc. ATTN: Jeff Bezos 1200 12 <sup>th</sup> Avenue S. Suite 1200 Seattle, WA 98144  Amazon.com, Inc. ATTN: Jeff Bezos 410 Terry Avenue N. Seattle, WA 98109	District Attorney's Office for the 58 Counties of California
	City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

**From:** Larry Lee

**Re: 60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)**

Dear Sir/Madam:

Acting in the interest of the general public, Larry Lee (hereinafter "Noticing Party") hereby provides notice pursuant to California Health and Safety Code section 25249.7(d) of violations of California Health & Safety Code section 25249.6, et seq. ("Proposition 65"). Mr. Lee's purpose in bringing this enforcement action is to reduce exposure to toxic chemicals in California. Violations are suspected to be occurring in Alameda County and throughout the State of California, pursuant to 27 California Code of Regulations § 25903(c)(3), so notice is being sent to the district attorney for each of the 58 counties in California. Further, the Noticing Party provides this notice to the California Attorney General and the city attorneys for the cities of Los Angeles, San Diego, San Francisco, and San Jose.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached for Violators (the companies listed above) is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is a summary of Proposition 65 prepared by the

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Office of Environmental Health Hazard Assessment (“OEHHA”) of the California Environmental Protection Agency. OEHHA’s Proposition 65 Implementation Office may be reached at (916) 445-6900, and the agency posts information about Proposition 65 at: <http://oehha.ca.gov/prop65.html>.

### Description of Violation

<b>Exposure:</b>	Consumer
<b>Listed Chemical:</b>	Mercury
<b>Routes of Exposure:</b>	Ingestion, Dermal, Inhalation
<b>Type of Harm:</b>	Developmental Toxin
<b>Included Products:</b>	Skin lightening creams
<b>Example of Products:<sup>1</sup></b>	Monsepa Express Peeling Night Face Cream, 15 mL size
<b>Violators:</b>	Amazon.com, aztopselstore.com
<b>Relevant Period:</b>	From May 2011 until present

Violators have contravened the warning requirement at section 25249.6 of the California Health and Safety Code, 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.” Violators have manufactured, distributed, marketed, and/or sold Products containing mercury without the warnings required by Proposition 65, dating at least as far back as May 2011, and continuing each day through the present. Without proper warnings, California citizens lack the information necessary to make informed decisions to avoid consumer exposure to the Listed Chemical.

The Products containing mercury are distributed and/or manufactured by AZTOPSEL and sold by retailers AZTOPSEL and Amazon.com, Inc. in California in transactions including business-to-business and by internet purchase.

Mercury is an additive to beauty products used to lighten skin, and mercury is known to the State of California to be a developmental toxin. Exposure to consumers has occurred through the act of acquiring, using, and applying the Products. The Products are designed and specifically marketed for direct contact with skin. Inorganic mercury in a skin cream may enter the body through three routes: oral, transdermal absorption, and by inhalation. Oral exposures may occur post-application due to insufficient hand washing prior to eating or preparation of food. The placement of the product directly on the skin allows for transdermal absorption. Mercury face creams produce sufficient amounts of mercury vapor to facilitate inhalation as a route of exposure for all household members, including infants and children, who touch and spend time close to the skin of their adult parents.

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<sup>1</sup> This example is non-exclusive.

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## Communications

Please direct all communication related to this matter to James Birkelund, attorney for the Noticing Party, at:

Lawrence Lee  
c/o James Birkelund  
Law Offices of James Birkelund  
548 Market St., #11200  
San Francisco, CA 94104  
T: 415-602-6223; F: 415-789-4556  
Email: james@birkelundlaw.com

## Resolution

To correct the violation occasioned by the failure to warn all consumers of the exposure to mercury, the Noticing Party intends to file a citizen enforcement action against the Violators at the expiration of the 60-day notice period initiated by this letter and required by law before a suit is filed. Cal. Health & Safety Code § 252549.7(d)(1). Consistent with the public interest mission of this notice letter and to expeditiously rectify these ongoing violations of California law, the Noticing Party is open to constructively resolving the violations with a binding written agreement and short of filing suit. This would avoid both unwarned consumer exposures to mercury and the expense and time of litigation.

Sincerely,



James M. Birkelund

**Enclosures:** Certificate of Merit  
Certificate of Service  
OEHHA Summary of Proposition 65 (to Violators only)  
Supporting Information for Certificate of Merit (to Attorney General only)

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**CERTIFICATE OF MERIT**

California Health & Safety Code § 25249.7(d)

I, James Birkelund, hereby declare:

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

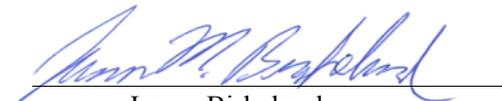
2. I am an attorney for the noticing party(ies).

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 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 plaintiff's 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 section 25249.7(h), *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.

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James Birkelund

Enclosure (Attorney General copy only)

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**PROOF OF SERVICE**

I, the undersigned, am over the age of 18 years and not a party to this case.

\_\_\_\_\_ I am a resident of or employed in the county where the mailing occurred and my address in that county is: [\_\_\_\_\_].

X  I am an active member of the State Bar of California (bar number 206328).

\_\_\_\_\_ I am a resident of or employed in the county where the mailing occurred and my address in that county is: [\_\_\_\_\_]. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Post Office.

On the date shown below, I caused to be served the following documents:

- **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5, et seq.**
- **CERTIFICATE OF MERIT**
- **“THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** (served only on alleged violators)
- **CERTIFICATE OF MERIT ATTACHMENTS** (served only on Attorney General)

by having copies of the same enclosed in sealed envelopes addressed to each of the entities shown below and deposited in the U.S. mail with the postage fully prepaid.

**Name and address of each alleged violator to whom documents were mailed:**

President or CEO  
AZTOPSEL  
391 Caribe Way  
San Jose, CA 9513

Amazon.com, Inc.  
ATTN: Jeff Bezos  
1200 12<sup>th</sup> Avenue S.  
Suite 1200  
Seattle, WA 98144

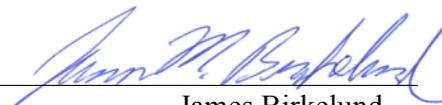
Amazon.com, Inc.  
ATTN: Jeff Bezos  
410 Terry Avenue N.  
Seattle, WA 98109

**Name and address of each public prosecutor to whom documents were mailed:**

See attached distribution list.

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

Date: May 22, 2014

By:   
James Birkelund

## Distribution List

The Honorable Nancy O'Malley  
District Attorney  
ALAMEDA COUNTY  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Todd Riebe  
District Attorney  
AMADOR COUNTY  
708 Court Street, #202  
Jackson, CA 95642

The Honorable Barbara Yook  
District Attorney  
CALAVERAS COUNTY  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable Mark Peterson  
District Attorney  
CONTRA COSTA COUNTY  
900 Ward Street  
Martinez, CA 94553

The Honorable Vernon Pierson  
District Attorney  
EL DORADO COUNTY  
515 Main Street  
Placerville, CA 95667

The Honorable Robert Maloney  
District Attorney  
GLENN COUNTY  
P.O. Box 430  
Willows, CA 95988

The Honorable Gilbert G. Otero  
District Attorney  
IMPERIAL COUNTY  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Lisa Green  
District Attorney  
KERN COUNTY  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Donald Anderson  
District Attorney  
LAKE COUNTY  
255 N. Forbes Street  
Lakeport, CA 95453

The Honorable Jackie Lacey  
District Attorney  
LOS ANGELES COUNTY  
210 W. Temple Street  
Los Angeles, CA 90012

The Honorable Terese Drabec  
District Attorney  
ALPINE COUNTY  
P.O. Box 248  
Markleeville, CA 96120

The Honorable Michael Ramsey  
District Attorney  
BUTTE COUNTY  
25 County Center Drive, Administration Building  
Oroville, CA 95965

The Honorable John Poyner  
District Attorney  
COLUSA COUNTY  
346 5th Street, Suite 101  
Colusa, CA 95932

Katherine Micks  
Acting District Attorney  
DEL NORTE COUNTY  
450 H Street, Room 171  
Crescent City, CA 95531

The Honorable Elizabeth Egan  
District Attorney  
FRESNO COUNTY  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

The Honorable Paul Gallegos  
District Attorney  
HUMBOLDT COUNTY  
825 5th Street  
Eureka, CA 95501

The Honorable Thomas L. Hardy  
District Attorney  
INYO COUNTY  
168 North Edwards  
Independence, CA 93526

The Honorable Greg Strickland  
District Attorney  
KINGS COUNTY  
1400 West Lacey Blvd.  
Hanford, CA 93230

The Honorable Robert Burns  
District Attorney  
LASSEN COUNTY  
220 S. Lassen Street, Suite 8  
Susanville, CA 96130

The Honorable Michael Keitz  
District Attorney  
MADERA COUNTY  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
District Attorney  
MARIN COUNTY  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable C. David Eyster  
District Attorney  
MENDOCINO COUNTY  
P.O. Box 1000  
Ukiah, CA 95482

The Honorable Jordan Funk  
District Attorney  
MODOC COUNTY  
204 S. Court Street Room 202  
Alturas, CA 96101

The Honorable Dean Flippo  
District Attorney  
MONTEREY COUNTY  
P.O. Box 1131  
Salinas, CA 93902

The Honorable Clifford Newell  
Office of the District Attorney  
NEVADA COUNTY  
201 Commercial Street  
Nevada City, CA 95959

The Honorable R. Scott Owens  
District Attorney  
PLACER COUNTY  
10810 Justice Center Drive  
Roseville, CA 95678

The Honorable Paul Zellerbach  
District Attorney  
RIVERSIDE COUNTY  
3960 Orange Street  
Riverside, CA 92501

The Honorable Candice Hooper-Mancino  
District Attorney  
SAN BENITO COUNTY  
419 4th Street  
Hollister, CA 95023

The Honorable Bonnie Dumanis  
District Attorney  
SAN DIEGO COUNTY  
330 W. Broadway, Suite 1300  
San Diego, CA 92101

The Honorable James Willett  
District Attorney  
SAN JOAQUIN COUNTY  
P.O. Box 990  
Stockton, CA 95202

The Honorable Stephen Wagstaffe  
District Attorney  
SAN MATEO COUNTY  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable Tom Cooke  
District Attorney  
MARIPOSA COUNTY  
P.O. Box 730  
Mariposa, CA 95338

The Honorable Larry Morse II  
District Attorney  
MERCED COUNTY  
550 West Main Street  
Merced, CA 95340

The Honorable Tim Kendall  
District Attorney  
MONO COUNTY  
P.O. Box 2053  
Mammoth Lakes, CA 93546

The Honorable Gary Lieberstein  
District Attorney  
NAPA COUNTY  
P.O. Box 720  
Napa, CA 94559

The Honorable Tony Rackauckas  
District Attorney  
ORANGE COUNTY  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable David Hollister  
District Attorney  
PLUMAS COUNTY  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Jan Scully  
District Attorney  
SACRAMENTO COUNTY  
901 G Street  
Sacramento, CA 95812

The Honorable Michael Ramos  
District Attorney  
SAN BERNARDINO COUNTY  
303 W. Third Street  
San Bernardino, CA 92415

The Honorable George Gascon  
District Attorney  
SAN FRANCISCO COUNTY  
880 Bryant Street, Third Floor  
San Francisco, CA 94103

The Honorable Gerald Shea  
District Attorney  
SAN LUIS OBISPO COUNTY  
Courthouse Annex, 4th Floor  
San Luis Obispo, CA 93408

The Honorable Joyce Dudley  
District Attorney  
SANTA BARBARA COUNTY  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable Jeffrey Rosen  
District Attorney  
SANTA CLARA COUNTY  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Bob Lee  
District Attorney  
SANTA CRUZ COUNTY  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Stephen Carlton  
District Attorney  
SHASTA COUNTY  
1355 West Street  
Redding, CA 96001

The Honorable Lawrence Allen  
District Attorney  
SIERRA COUNTY  
100 Courthouse Square  
Downieville, CA 95936

The Honorable James Kirk Andrus  
District Attorney  
SISKIYOU COUNTY  
P.O. Box 986  
Yreka, CA 96097

The Honorable Donald du Bain  
District Attorney  
SOLANO COUNTY  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Jill Ravitch  
District Attorney  
SONOMA COUNTY  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

The Honorable Birgit Fladager  
District Attorney  
STANISLAUS COUNTY  
832 12th Street, Suite 300  
Modesto, CA 95353

Assistant District Attorney Jana D. McClung  
Acting District Attorney  
SUTTER COUNTY  
446 Second Street, Suite 102  
Yuba City, CA 95991

The Honorable Gregg Cohen  
District Attorney  
TEHAMA COUNTY  
P.O. Box 519  
Red Bluff, CA 96080

The Honorable Michael Harper  
District Attorney  
TRINITY COUNTY  
P.O. Box 310  
Weaverville, CA 96093

The Honorable Tim Ward  
District Attorney  
TULARE COUNTY  
221 South Mooney Blvd., Suite 224  
Visalia, CA 93291

The Honorable Michael Knowles  
District Attorney  
TUOLUMNE COUNTY  
423 No. Washington Street  
Sonora, CA 95370

The Honorable Gregory Totten  
District Attorney  
VENTURA COUNTY  
800 South Victoria Avenue  
Ventura, CA 93009

The Honorable Jeffery Reisig  
District Attorney  
YOLO COUNTY  
301 Second Street  
Woodland, CA 95695

The Honorable Patrick McGrath  
District Attorney  
YUBA COUNTY  
215 Fifth Street, Suite 152  
Marysville, CA 95901

**Additions to Distribution List**

**Attached to Letter from Larry Lee, dated May 22, 2014**

San Jose City Attorney  
200 E. Santa Clara St.  
16th Floor  
San Jose, CA 95113

San Diego City Attorney  
Civic Center Plaza  
1200 3rd Ave. #1620  
San Diego, CA 92101

Los Angeles City Attorney  
800 City Hall East  
200 N. Main Street  
Los Angeles, CA 90012

San Francisco City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682

Sacramento City Attorney  
Office of the City Attorney  
915 I Street, 4th Floor  
Sacramento, CA 95814-2608