

## NOTICE OF VIOLATION

California Safe Drinking Water  
and Toxic Enforcement Act

Nicotine in E-Cigarette Products

9/1/2015

Momen LaChance  
Living Room Vape  
570 S. Spring St.  
Los Angeles, CA

Trang Diem Tran  
Lush Vapor  
410 N. Harbor Blvd.  
Santa Ana, CA 92703

To the Attorney General, the District Attorney, the City Attorney and to Whom it May Concern:

This Notice of Violation ("Notice") concerns a violation of the warning requirement of Proposition 65, which states that "[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 . . ." *Cal. Health & Safety Code § 25249.6*.

This Notice is provided by Toxin Watchdog, LLC, 6520 Platt Ave. #919, West Hills, CA 91307 ("Toxin Watchdog"). Toxin Watchdog is a company dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, Toxin Watchdog is acting "in the public interest" pursuant to Proposition 65.

### DESCRIPTION OF VIOLATION

**Violator(s):** The names and addresses of the violator(s) are:

Momen LaChance  
Living Room Vape  
570 S. Spring St.  
Los Angeles, CA

Trang Diem Tran  
Lush Vapor  
410 N. Harbor Blvd.  
Santa Ana, CA 92703

**Time Period of Exposure:** The violations have been occurring since at least 9/1/2014, are continuing to this day and will continue to occur as long as the product(s) subject to this Notice of Violation are sold to California consumers.

**Provision of Proposition 65 Violated:** This Notice of Violation covers the "warning provision" of Proposition 65, which is found at *Cal. Health and Safety Code § 25249.6*.

**Chemical(s) Involved:** The name of the listed chemical involved in these violations: nicotine. Nicotine is a toxin that is known to the State of California to cause reproductive harm. It was added to the Governor's List as a known reproductive toxin on April 1, 1990, more than twelve months prior to the issuance of this Notice. Exposures to nicotine occur from use of the products identified in this Notice of Violation.

**Type of Products:** The specific type of products causing this violation consists of electronic cigarettes (the "Products"). Non-exclusive example(s) of the products are: Mount N Do, 30 ml juice; Misty BJ, 30 ml juice, UPC: 1556802128; 1556822122.

**Description of Exposure:** This Notice addresses consumer exposure to nicotine. Use of the Product(s) identified in this Notice results in human exposures to nicotine. The Products contain nicotine as an intentionally added ingredient. The routes of exposure for the violations include inhalation by consumers. These exposures occur through the reasonably foreseeable use of the Products when, for example, individuals vaporize the Products and inhale the resulting fumes. No clear and reasonable warning is provided with these Products regarding the exposures to nicotine caused by ordinary use of the Products.

**Place of Exposure:** The Product(s) are sold and/or distributed at 570 S. Spring St., Los Angeles, CA . Exposure will result wherever the Product(s) are used.

**Notice of Intent to Commence Private Enforcement Action:** Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 25249.7(d)(1)*. By this letter, Toxin Watchdog gives notice of the violation to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice, subject to any statutory extensions. *See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. tit. 27 § 25903(d)(1)*. Toxin Watchdog remains willing and open to discussing the possibility of resolving its grievances short of formal litigation.

**Resolution of Noticed Claims:** Based on the allegations set forth in this Notice, Toxin Watchdog intends to file a citizen enforcement lawsuit against each alleged violator 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 nicotine exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in *Cal. Health & Safety Code § 25249.7(b)*. If any alleged violator is interested in resolving this dispute without resort to expensive

and time-consuming litigation, please feel free to contact Toxin Watchdog through its counsel identified below.

Please direct any inquiries regarding this Notice to Toxin Watchdog through its counsel Lee Weisberg, at 18543 Devonshire St. #330, Northridge, CA 91324, (747) 202-5004, [cognitorlaw@gmail.com](mailto:cognitorlaw@gmail.com)

Lee Weisberg,  
Attorney for Toxin Watchdog, LLC

A handwritten signature in blue ink that reads "Lee Weisberg". The signature is written in a cursive style with a large, sweeping flourish at the end of the word "Weisberg".

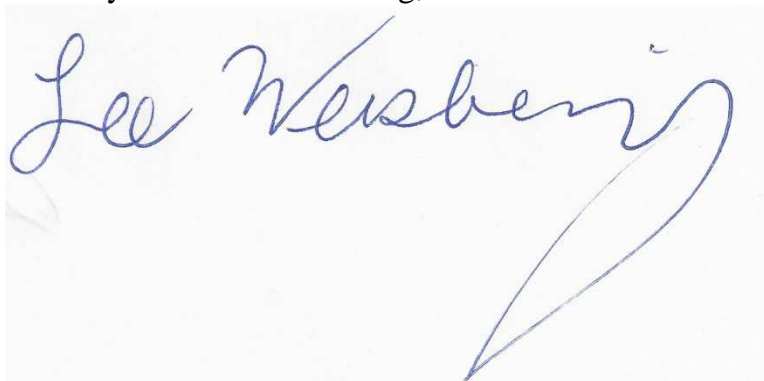
**CERTIFICATE OF MERIT**  
**Health & Safety Code § 25249.7(d)**

I, Lee Weisberg, 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 and I represent the noticing party, Toxin Watchdog, LLC.
3. My associates 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.

9/1/2015

Lee Weisberg  
Attorney for Toxin Watchdog, LLC

A handwritten signature in blue ink that reads "Lee Weisberg". The signature is written in a cursive style and is positioned above a horizontal line.

## 27 CCR Appendix A

### 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 California Office of Environmental Health Hazard Assessment (OEHHA), 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. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 27 of the California Code of Regulations, sections 25102 through 27001.1 These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### WHAT DOES PROPOSITION 65 REQUIRE?

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say 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 to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**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. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Periods.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**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. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure 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"

(NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure 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" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering 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 pass into or probably pass into a source of drinking water, 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" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that 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. 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. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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 to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation: An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;

- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:



- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

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Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

#### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

## **IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code § 25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

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Date :

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

### **PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

#### **Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code § 25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR

Empty Checkbox? Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

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Signature of alleged violator or authorized representative Date

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Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov. Revised: May 2014

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1 All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>. 2 See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL**

I declare that: I am employed in Los Angeles County, California; my business address is 18543 Devonshire St. #330, Northridge, CA 91324. I am over the age of 18 years and not a party to the within cause and my electronic notification address is cognitorlaw@gmail.com.

On 9/1/2015, I served true copies of the following documents:

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

**CERTIFICATE OF MERIT;** and


**APPENDIX A: THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

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

*Please see attached service list.*

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 9/1/2015, at Los Angeles, California.

Lee Weisberg, Declarant

A handwritten signature in blue ink that reads "Lee Weisberg". The signature is written in a cursive style with a large, sweeping flourish at the end.

## **SERVICE LIST**

Momen LaChance  
Living Room Vape  
570 S. Spring St.  
Los Angeles, CA

Trang Diem Tran  
Lush Vapor  
410 N. Harbor Blvd.  
Santa Ana, CA 92703

Attorney General  
Proposition 65 Enforcement Reporting  
Attention: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550

District Attorney of Los Angeles County  
Proposition 65 Reporting  
210 W. Temple Street, Ste. 1800  
Los Angeles, CA 90012-3210

Los Angeles City Attorney's Office  
Proposition 65 Reporting  
City Hall East  
200 N. Main Street, Rm. 800  
Los Angeles, CA 90012

Orange County District Attorney  
PO Box 808  
Santa Ana, CA 92702