



NEW YORK | PENNSYLVANIA | NEW JERSEY | CALIFORNIA

November 16, 2015

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(Cal. Health & Safety Code § 252249.5, *et seq.*)

Chad Wiegand  
Senior Vice President, General Counsel &  
Secretary  
Schwabe North America, Inc.  
825 Challenger Dr.  
Green Bay, WI 54311

Chad Wiegand  
Senior Vice President, General Counsel &  
Secretary  
Nature's Way Products, LLC  
825 Challenger Dr.  
Green Bay, WI 54311

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST  
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning herbal supplements containing lead

Dear Mr. Wiegand:

This firm represents Natasha Mann in connection with this notice of violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Cal. Health & Safety Code §§ 25249.5 *et seq.* (also referred to as "Proposition 65") (hereinafter "Notice"). This letter serves to provide notification of these violations to Schwabe North America, Inc. and Nature's Way Products, LLC (hereinafter collectively "Violators") and to the public enforcement agencies. By sending this Notice, Ms. Mann is acting "in the public interest" pursuant to Proposition 65.

The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. Ms. Mann is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

This Notice concerns violations of the warning prong 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 addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” Cal. Code Regs. 27 tit. § 25602(b).

Ms. Mann has discovered that Violators’ herbal supplements, specifically Black Cohosh 540 mg, Change-O-Life 7 Herb Blend, and PMS with Vitamin B6 & 5-HTP (hereinafter collectively the “products”) contain lead. Lead is known to the State of California to cause both cancer and reproductive toxicity in females and males. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State of California to cause reproductive toxicity to both females and males, and on October 1, 1992, the Governor added lead and lead compounds to the list of chemicals known to the State of California to cause cancer. Both additions took place more than twenty (20) months before Ms. Mann served this Notice.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers the products. The packaging for the products (meaning any label or other written, printed or graphic matter affixed to or accompanying the products or their container or wrapper) contain no Proposition 65-compliant warning. Nor did Violators, with regard to the products, provide a system, which provided clear and reasonable warnings. Nor did Violators, with regard to the products, provide identification of the product at retail outlets or online in a manner that provided a warning through shelf labeling, signs, menus, or any combination thereof.

The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the products by consumers. Accordingly, the route of exposure occurs primarily through the ingestion route, but may also occur through the inhalation and/or dermal contact routes of exposure

Each of these violations has occurred on every day since at least November 12, 2012, and will continue every day until clear and reasonable warnings are provided to purchasers and users of the products.

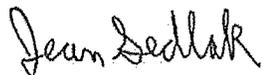
Proposition 65 requires that notice of intent to sue be given to the Violator(s) sixty (60) days before the suit is filed. Cal. Health & Safety Code § 25249.7(d)(1). With this letter, Ms. Mann gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the Violators’ place of address is beyond the State of California but within the United States), Ms. Mann may file suit. See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. 27 tit. § 25903(d)(1).

Ms. Mann, a California resident/consumer, remains willing and open to discussing the possibility of resolving her grievances short of formal litigation. Ms. Mann can be reached

through her attorneys at (845) 483-7100 or 85 Civic Center Plaza, Suite 104, Poughkeepsie, New York 12601.

Sincerely,

**THE SULTZER LAW GROUP P.C.**



Jean Sedlak (Admitted in CA)  
Jason P. Sultzer (Admitted in NY)

Attachments:

1. Certificate of Merit
2. Additional Supporting Information for Certificate of Merit (to Attorney General and Violators only)
3. Certificate of Service
4. OEHHA Summary (Appendix A) (to Violators only)

**CERTIFICATE OF MERIT**

**Re: Natasha Mann's November 16, 2015 Notice of Proposition 65 Violations by Schwabe North America, Inc. and Nature's Way Products, LLC**

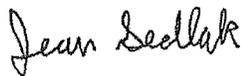
I, Jean Sedlak, hereby declare:

- I. This Certificate of Merit (this "Certificate") accompanies the attached sixty-day notice dated November 16, 2015 (the "Notice") in which it was alleged that the parties identified in the Notice (the "Violators") had violated California Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
- II. I am the attorney for the noticing party.
- III. 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 exposure to the listed chemical that is the subject of the action.
- IV. Based on the information obtained through 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.
- V. The copy of this Certificate of Merit served on the Attorney General and Violators attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in California Health and 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. See Exs. A-C.

Dated: November 16, 2015

Sincerely,

**THE SULTZER LAW GROUP P.C.**



Jean Sedlak

## CERTIFICATE OF SERVICE

I the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On November 16, 2015, I served the following documents: NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Chad Wiegand  
Senior Vice President,  
General Counsel & Secretary  
Schwabe North America, Inc.  
825 Challenger Dr.  
Green Bay, WI 54311

Chad Wiegand  
Senior Vice President,  
General Counsel & Secretary  
Nature's Way Products, LLC  
825 Challenger Dr.  
Green Bay, WI 54311

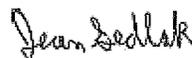
On November 16, 2015, I served the following documents: NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(I) on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>

On November 16, 2015, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List Attached hereto. As to those parties listed by mailing address only, I effected service by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail. As to those parties having an email address listed, I effected service by transmitting the documents via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on November 16, 2015.

By: \_\_\_\_\_



Jean Sedlak

# SERVICE LIST

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346 5<sup>th</sup> Street, Suite 101  
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Administration Building  
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Ukiah, CA 95482

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Merced, CA 95340

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204 S. Court Street, Room 202  
Alturas, CA 96101

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93546

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Redding, CA 96001

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Fairfield, CA 94533

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San Bernardino, CA 92415

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Attorney  
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ANGELES  
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