

60-DAY NOTICE OF VIOLATION

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

This 60-Day Notice of Violation Supplements the following 60-Day Notices of Violation:

- 1) **AG#: 2015-00223**
- 2) **AG#: 2015-00411**
- 3) **AG#: 2015-00491**
- 4) **AG#: 2015-00798**

DATE: May 20, 2016

To: The Estée Lauder Companies Inc.; Physicians Formula, Inc.; Markwins Beauty Products, Inc.; The Hain Celestial Group, Inc.; Beiersdorf, Inc.; Boots Retail USA, Inc.; Kiss My Face, LLC; Cosmetic Dermatology, Inc.; StriVectin Operating Co., Inc.; Niadyne, Inc. and;

California Attorney General's Office; District Attorney's Office for 58 Counties; and City Attorney's Office for Los Angeles, San Diego, San Jose and San Francisco.

From: Shefa LMV, LLC

I. INTRODUCTION

We are citizens of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

| | |
|----------------------------|-----------------------------------|
| Product Exposure: | See Section VII, Exhibit A |
| Listed Chemical: | Benzophenone; |
| Routes of Exposure: | Dermal absorption; |
| | Ingestion; and Inhalation |
| Types of Harm: | Carcinogen |

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Exhibit

A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the “products.” The sales of these products in California dating at least as far back as **August 12, 2014** are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and responsible warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products from dermal and ingestion exposure as well as inhalation, California citizenry lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes, workplaces and elsewhere throughout California. Exposure to consumers includes, but is not limited to, application to their bodies, their pets or their children. Benzophenone exposure to consumers includes dermal exposure when consumers handle the product (including through cuts and breaks in the skin) and other migration pathways, including but not limited to incidental ingestion after one touches the chemical and then touches food or otherwise places his hands on or near his lips where his tongue can or will continue this pathway to ingestion exposure. Exposure may continue to occur for a significant period after the initial contact. People likely to be exposed are women, men, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed by the state as known to cause cancer.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to us through our counsel’s offices at the following address:

Daniel N. Greenbaum, Esq.
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Main: (818) 809-2199
Fax: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment (“OEHHA”) in the Proposition 65 Implementation Office at (916) 445-6900. For the alleged Violator(s), I have attached a copy of “Proposition 65 in Plain Language” which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall

products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future, or reformulate such products to eliminate the Benzophenone exposures.

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day Notice period elapses; nor (2) speak for the Attorney General or any District Attorney or City Attorney who received this Notice. Therefore, while reaching an agreement that will resolve my claims, such an agreement may not be approved by the Attorney General after referral to them, or by the court as the last voice on settlements.

VI. ADDITIONAL INFORMATION

| <u>Product</u> | <u>Retailer(s)</u> | <u>Manufacturer(s)/Distributor(s)</u> |
|--|---------------------------|--|
| Personal care products containing benzophenone | | The Estée Lauder Companies Inc.; Physicians Formula, Inc.; Markwins Beauty Products, Inc.; The Hain Celestial Group, Inc.; Beiersdorf, Inc.; Boots Retail USA, Inc. Kiss My Face, LLC; Cosmetic Dermatology, Inc.; StriVectin Operating Co., Inc.; Niadyne, Inc. |

VII. EXHIBIT A

Identified below are named products which contain the alleged chemicals at issue, and this reference is supportive of the material facts that are a part of my counsel's Certificate of Merit that is attached hereto as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s) and other distributors and retailers of the product.

We are identifying a number of products herein for all recipients' benefit to assist in investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the Product Category listed in Exhibit A. It is important to note that this example list does not represent an exhaustive or comprehensive identification of any or all specific products. Further, it is our position that the alleged Violator(s) are obligated to continue to conduct in good faith an investigation into other specific products within the type or category

described below that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violator(s)' custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

| Product Category¹ | Specific Product | UPC | Manufacturer/Distributor |
|--|--|--------------|---------------------------------|
| Personal Care Products containing Benzophenone | Bobbi Brown SPF 50 Protective Face Base SPF 50 (E8XK) | 716170106335 | The Estée Lauder Companies Inc. |
| Personal Care Products containing Benzophenone | Estee Lauder Daywear Advanced Multi-Protection Anti-Oxidant & UV Defense Broad Spectrum SPF 30 Lotion (YCL3) | 027131990413 | The Estée Lauder Companies Inc. |
| Personal Care Products containing Benzophenone | La Mer The Reparative Body Sun Lotion Broad Spectrum SPF 30 Lotion (53ER) | 747930042570 | The Estée Lauder Companies Inc. |
| Personal Care Products containing Benzophenone | Alba Botanica, Sea Moss Moisturizer, SPF 15 | 724742003128 | The Hain Celestial Group, Inc. |
| Personal Care Products containing Benzophenone | Alba Botanica Hawaiian Greentea SPF 45 | 724742008277 | The Hain Celestial Group, Inc. |
| Personal Care Products containing Benzophenone | Jason Sun Sport Sunscreen SPF 45 | 078522083207 | The Hain Celestial Group, Inc. |
| Personal Care Products containing Benzophenone | Physicians Formula Super CC All Over Blur Primer Stick | 044386066649 | Physicians Formula, Inc. |
| Personal Care Products containing Benzophenone | Physicians Formula Wrinkle Corrector SPF 15 | 044386075276 | Physicians Formula, Inc. |
| Personal Care Products containing Benzophenone | Wet n Wild Juicy Lip Balm | 077802528322 | Markwins Beauty Products, Inc. |
| Personal Care Products containing Benzophenone | Black Radiance BB Cream SPF 15 | 077802645340 | Markwins Beauty Products, Inc. |
| Personal Care Products containing | Kiss my Face Kids defense spray SPF 50 | 028367841975 | Kiss My Face, LLC |

¹ Including, but not limited to, products that are labeled as having a Sun Protection Factor Value, sunscreen products, creams, lotions, cosmetics, and hair products

| | | | |
|--|---|---------------|--------------------------------|
| Benzophenone | | | |
| Personal Care Products containing Benzophenone | Nivea Men Original Protective Lotion SPF 15 | 072140016302 | Beiersdorf, Inc. |
| Personal Care Products containing Benzophenone | Aquaphor Broad Spectrum SPF 30 | 072140010119 | Beiersdorf, Inc. |
| Personal Care Products containing Benzophenone | Eucerin Daily Protection Body Lotion SPF 15 | 072140012083 | Beiersdorf, Inc. |
| Personal Care Products containing Benzophenone | Botanics Organic Hydrating Day Cream | 5000167157727 | Boots Retail USA, Inc. |
| Personal Care Products containing Benzophenone | Dr. Brandt BB cream | 663963008249 | Cosmetic Dermatology, Inc. |
| Personal Care Products containing Benzophenone | Strivectin CC plum SPF 20 | 817777007183 | Strivectin Operating Co., Inc. |
| Personal Care Products containing Benzophenone | NIA24 Niacin-Powered Skin Therapy | 852103000773 | Niadyne, Inc. |

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this case or action. My business address is: **7120 Hayvenhurst Ave., Suite 320, Van Nuys CA 91406**

A True and Correct copy of the documents entitled 60 DAY NOTICE OF VIOLATION; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY will be served or was served in the manner stated below:

I. Interested Parties (Served via Email): On May 20, 2016, I caused to be served the following persons and/or entities via the valid email address(es) below. Counsel represented that they would accept service on behalf of the following via email:

| | | |
|----------------------------------|--------------------|--------------------------|
| The Estee Lauder Companies, Inc. | Alejandro Bras | ABras@mofa.com |
| The Hain Celestial Group, Inc. | Trenton H. Norris | Trent.Norris@aporter.com |
| Physicians Formula, Inc. | Trenton H. Norris | Trent.Norris@aporter.com |
| Markwins Beauty Products, Inc. | Trenton H. Norris | Trent.Norris@aporter.com |
| Kiss My Face LLC | Peg Toledo | peg@toledolawcorp.com |
| Beiersdorf, Inc. | Greg Sperla | sperlag@gtlaw.com |
| Boots Retail USA, Inc. | Greg Sperla | sperlag@gtlaw.com |
| Cosmetic Dermatology, Inc. | Vilma Palma-Solana | VPalma@perkinscoie.com |
| StriVectin Operating Co., Inc. | Jeson Kerr | jasonkerr@ppktrial.com |
| Niadyne, Inc. | Jason Kerr | jasonkerr@ppktrial.com |

II. California Attorney General (via website Portal): On May 20, 2016, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General’s website.

III. District and City Attorneys (via U.S. Mail): I caused to be served on May 20, 2016 the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows: SEE ATTACHED FOR FULL SERVICE LIST

IV. District and City Attorneys (via email): On May 20, 2016, I served the following persons and/or entities at the last known electronic addresses via email. The transmission was reported as sent without error.

cfepd@yolocounty.org; sgrassini@contracosta.org; Prop65DA@co.monterey.ca.us; epu@da.sccgov.org; CEPD@countyofnapa.org; jbarnes@sonoma-county.org; Prop65@co.tulare.ca.us;

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



May 20, 2016

Nathan Ford

Date

Name

Signature

District Attorney
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1225 Fallon Street, Room 900
Oakland, CA 94612

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CERTIFICATE OF MERIT

I, Daniel N. Greenbaum, hereby declare:

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

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

(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 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.

(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)(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.

May 20, 2016

Date

Daniel N. Greenbaum

Name



Signature