

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

### Bisphenol A in Bottled Water in Polycarbonate Plastic Bottles for Use in Water Coolers

September 30, 2016

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:
  - Daiohs U.S.A., Inc.**  
13030 Alondra Blvd, Ste 202  
Cerritos, CA 90703
  - Modesto Bottled Water, Inc.**  
1124 Kansas Avenue, Suite B-1  
Modesto, CA 95351
- Time Period of Exposure: The violations have been occurring since at least May 11, 2016, 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 bisphenol A ("BPA"). Exposures to BPA occur from the consumption of the products subject to this Notice.
- Type of Product: The specific type of product causing these violations is bottled water in polycarbonate plastic bottles for use in water coolers. A non-exclusive example of this specific type of product is the Aquas Premium Water 5-Gallon Bottled Water with Pure Choice Purified Water.
- Description of Exposure: This Notice addresses consumer exposures to BPA. Consumption of the products identified in this Notice results in human exposures to BPA. The products contain BPA. The primary route of exposure for the

violations is direct ingestion when consumers drink the water stored in the products. These exposures occur in homes, workplaces, and everywhere else throughout California where the products are consumed. No clear and reasonable Proposition 65 warning is provided with these products regarding the presence of BPA in the products.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH 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 BPA 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 alleged violator 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.

**Preservation of Relevant Evidence:**

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of BPA in bottled water in polycarbonate plastic bottles for use in water coolers; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of BPA in such products; and representative exemplars of each unit of any such products sold by each alleged violator since May 11, 2016.

Please direct any inquiries regarding this Notice to CEH's counsel Eric S. Somers at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, esomers @ lexlawgroup.com.

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

I, Eric S. Somers, 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.

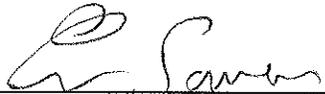
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

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.

September 30, 2016

  
\_\_\_\_\_  
Eric S. Somers  
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 [aklompus@lexlawgroup.com](mailto:aklompus@lexlawgroup.com).

On September 30, 2016, 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 12:46 p.m. on September 30, 2016:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Yeng Dang  
Supervising Deputy District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
[epu@da.sccgov.org](mailto:epu@da.sccgov.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Drive, Rm. 212J  
Santa Rosa, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Phillip J. Cline, District Attorney  
Tulare County  
221 S. Mooney Avenue, Rm. 224  
Visalia, CA 93291  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Paul E. Zellerbach, District Attorney  
Riverside County  
4075 Main Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Gregory D. Totten, District Attorney Ventura  
County  
800 South Victoria Avenue  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Jeff W. Reising, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

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 September 30, 2016, at San Francisco, California.

Signed:   
Adriana Klompus

### 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  
346 Fifth Street, Suite 101  
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 Los Angeles  
County  
210 W. Temple Street, Ste. 1800  
Los Angeles, CA 90012-3210

District Attorney of Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney of Marin County  
3501 Civic Center Drive, Rm. 130  
San Rafael, CA 94903

District Attorney of Mariposa County  
P.O. Box 730  
Mariposa, CA 95338

District Attorney of Mendocino  
County  
P.O. Box 1000  
Ukiah, CA 95482

District Attorney of Merced County  
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  
Bridgeport, CA 93546

District Attorney of Nevada County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney of Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney of Placer County  
10810 Justice Center Drive, Ste.  
240  
Roseville, CA 95678

District Attorney of Plumas  
County  
520 Main Street, Rm. 404  
Quincy, CA 95971

District Attorney of San Benito  
County  
419 Fourth Street, 2<sup>nd</sup> Fl.  
Hollister, CA 95023

District Attorney of San  
Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

District Attorney of San Diego  
County  
330 West Broadway, Ste. 1300  
San Diego, CA 92101

District Attorney of San Mateo  
County  
400 County Center, 3<sup>rd</sup> Fl.  
Redwood City, CA 94063

District Attorney of Santa Cruz  
County  
701 Ocean Street, Rm. 200  
Santa Cruz, CA 95060

District Attorney of Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney of Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney of Sierra County  
Courthouse  
100 Courthouse Sq., 2<sup>nd</sup> Fl.  
Downieville, CA 95936

District Attorney of Siskiyou  
County  
P.O. Box 986  
Yreka, CA 96097

District Attorney of Solano County  
675 Texas Street, Ste. 4500  
Fairfield, CA 94533

President\*  
Daiohs U.S.A., Inc.  
13030 Alondra Blvd, Ste 202  
Cerritos, CA 90703

District Attorney of Stanislaus County  
832 12th Street, Ste. 300  
Modesto, CA 95354

John Layman, President\*  
Modesto Bottled Water, Inc.  
1124 Kansas Avenue, Suite B-1  
Modesto, CA 95351

District Attorney of Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney of Tehama County  
P.O. Box 519  
Red Bluff, CA 96080

District Attorney of Trinity County  
P.O. Box 310  
11 Court Street  
Weaverville, CA 96093

District Attorney of Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney of Yuba County  
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