

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### 1,4-Dioxane in Shampoo, Shower Gel, Body Wash & Hand Soap

November 8, 2017

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 identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least November 8, 2014, 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 1,4-Dioxane. Exposures to 1,4-Dioxane occur from use of the products identified in this Notice.
- Types of Products: The specific types of products causing these violations are shampoo, shower gel, body wash, and hand soap. Non-exclusive examples of these specific types of products are identified on the attached Exhibit 1. Limitations of these types of products as to each alleged violator are identified on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to 1,4-Dioxane. Use of the products subject to this Notice results in human exposures to 1,4-Dioxane. The products contain 1,4-Dioxane. The routes of exposure for the violations include dermal contact and absorption, inhalation, and ingestion. These exposures occur through the reasonably foreseeable use of the products when, for example, individuals apply the products to their hair, scalp, and/or skin.

These exposures occur in homes, workplaces and everywhere else throughout California where the products are used. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of 1,4-Dioxane.

#### **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 1,4-Dioxane 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 1,4-Dioxane in shampoo, shower gel, body wash, and/or hand soap; 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 1,4-Dioxane in such products; and representative exemplars of each lot of each variety of any such product sold by each alleged violator since one year prior to the date of this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Mark N. Todzo at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, mtodzo at lexlawgroup.com.

**EXHIBIT 1**  
**November 8, 2017 Notice of Violation**  
**1,4-Dioxane in Shampoo, Shower Gel, Body Wash & Hand Soap**

<b>Names and Addresses of Responsible Parties</b>	<b>Product Type</b>	<b>Non-Exclusive Examples of the Products</b>
<b>99 Cents Only Stores LLC</b> 4000 E. Union Pacific Avenue City of Commerce, CA 90023	Shampoo sold by D.C.L. Inc.	Salon SPA 2 in 1 Volumizing Shampoo Plus Conditioner SKU No. 7-22429-20036-5
<b>Burlington Coat Factory Warehouse Corporation</b> 1830 Route 130 North Burlington, NJ 08016	Body Wash and Shampoo sold by Enchante Accessories Inc. and Hand Soap sold by Home & Body Company	Body Prescriptions 3 in 1 Pine Wood Body Wash, Shampoo & Conditioner Batch No. T17AF0401 Item No. BU7MWH02 PNI SKU No. AB88706355
		Hemp Seed Products Hemp Seed Oil Hand Soap with Essential Oil in Fresh Rose Item No. 11HSPHSFR SKU No. AB98244616
<b>Chattem, Inc.</b> 1715 W. 38 <sup>th</sup> Street Chattanooga, TN 37409	Shampoo	Selsun Blue Dandruff Shampoo SKU No. 0-41167-60203-4
<b>Enchante Accessories Inc.</b> 16 East 34 <sup>th</sup> Street 16 <sup>th</sup> Floor New York, NY 10016	Body Wash and Shampoo	Body Prescriptions 3 in 1 Pine Wood Body Wash, Shampoo & Conditioner Batch No. T17AF0401 Item No. BU7MWH02 PNI SKU No. AB88706355
<b>Genomma Lab USA, Inc.</b> 4550 Post Oak Place Drive Suite 326 Houston, TX 77027	Shampoo	Vanart Herbal Fusion Freshness Shampoo SKU No. 6-50240-02836-6
<b>Grisi Hnos., S.A. de C.V.</b> Calle Amores 1746 Col. Del Valle 03100 Ciudad de México, D.F. Mexico  <b>Grisi USA LLC</b> 1999 Bryan Street, Ste. 900 Dallas, TX 75201	Shampoo	Manzanilla Grisi Vitagloss Shampoo in Chamomile SKU No. 0-37836-08471-3

<b>Home &amp; Body Company</b> 18352 Enterprises Lane Huntington Beach, CA 92648	Hand Soap	Hemp Seed Products Hemp Seed Oil Hand Soap with Essential Oil in Fresh Rose Item No. 11HSPHSFR SKU No. AB98244616
<b>Kmart Corporation</b> 3333 Beverly Road, B2-116B Hoffman Estates, IL 60179	Body Wash sold under the Smart Sense brand	Smart Sense Ocean Air Body Wash SKU No. 8-83967-39331-2
<b>PMC Trade Export &amp; Import Corp.</b> 4005 N.W. 114 Avenue, #12 Doral, FL 33178	Shampoo sold under the Cre-C Max! brand	Cre-C Max! Shampoo SKU No. 0-91037-30236-6
<b>PureTek Corporation</b> 7900 Nelson Road, Ste. A Panorama City, CA 91402	Body Wash	Body Essence Tea Tree Oil Ultra-Moisturizing Body Wash SKU No. 7-31477-84003-4
<b>Wal-Mart Stores, Inc.</b> 702 SW 8 <sup>th</sup> Street Bentonville, AR 72716	Shampoo sold under the Cre-C Max! brand and by Grisi Hnos., S.A. de C.V. and Grisi USA LLC; Shower Gel sold by Instituto Espanol S.A.; and Body Wash sold by PureTek Corporation	Cre-C Max! Shampoo SKU No. 0-91037-30236-6
		Avena Instituto Espanol Shower Gel SKU No. 8-18821-00131-7
		Manzanilla Grisi Vitagloss Shampoo in Chamomile SKU No. 0-37836-08471-3
		Body Essence Tea Tree Oil Ultra-Moisturizing Body Wash SKU No. 7-31477-84003-4
<b>WinCo Foods, LLC</b> 650 N. Armstrong Place Boise, ID 83704	Shampoo sold by Genomma Lab USA, Inc. and Chattem, Inc.	Vanart Herbal Fusion Freshness Shampoo SKU No. 6-50240-02836-6
		Selsun Blue Dandruff Shampoo SKU No. 0-41167-60203-4

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

I, Mark N. Todzo, 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.

November 8, 2017



Mark N. Todzo  
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 medgar@lexlawgroup.com.

On November 8, 2017, 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 3:31 p.m. on November 8, 2017:

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)

Yen 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)

Allison Haley, District Attorney  
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931 Parkway Mall  
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[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

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

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221 S. Mooney Avenue, Rm. 224  
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Anne Marie Schubert, District Attorney  
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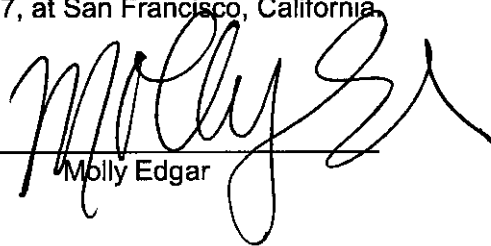
Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

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 November 8, 2017, at San Francisco, California.

Signed: \_\_\_\_\_



Molly Edgar

### SERVICE LIST

District Attorney of Alameda County  
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Mariposa, CA 95338

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Ukiah, CA 95482

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Merced, CA 95340

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Alturas, CA 96101-4020

District Attorney of Mono County  
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Nevada City, CA 95959

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Santa Ana, CA 92701

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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  
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