

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Perfluorooctanoic Acid in Makeup Foundation and Concealer

April 23, 2019

This Notice of Violation (the "Notice") 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 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. Caroline Cox is the Senior Scientist 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 10, 2018, and are continuing to this day.
- Provision of Proposition 65: This Notice 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 perfluorooctanoic acid ("PFOA"). Exposures to PFOA occur from the use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is makeup foundation and concealer. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. Further limitations, if any, on the specific products subject to this Notice for each individual violator are also identified on Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to PFOA. Use of the products identified in this Notice results in human exposures to PFOA. The routes of exposure for the violations are dermal absorption directly through the skin when consumers touch the products or apply them to the body, and ingestion via hand-to-mouth contact after consumers touch or handle the

products. No clear and reasonable Proposition 65 warning is provided with these products regarding the presence of PFOA 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 or otherwise provided to consumers; (2) provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future or reformulate such products to eliminate the PFOA 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 PFOA in the products; purchase, sales and usage 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 PFOA in such products; and representative exemplars of any such products provided to customers or consumers by the alleged violator since November 10, 2018, through the date of any trial of the claims alleged in this Notice.

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

EXHIBIT 1
April 23, 2019 Notice of Violation
Perfluorooctanoic Acid in Makeup Foundation and Concealer

Names and Addresses of Responsible Parties	Further Limitation on Products Sold by Violators	Non-Exclusive Examples of the Products
<p style="text-align: center;">Clinique Laboratories, LLC 767 Fifth Avenue New York, NY 10153</p>	n/a	<p style="text-align: center;">Clinique Superbalanced Makeup in Cream Chamois 04 UPC No. 0-20714-14962-8</p>
<p style="text-align: center;">The Estée Lauder Companies Inc. 767 Fifth Avenue New York, NY 10153</p> <p style="text-align: center;">Estée Lauder Inc. 7 Corporate Center Drive Melville, NY 11747</p>	n/a	<p style="text-align: center;">Clinique Superbalanced Makeup in Cream Chamois 04 UPC No. 0-20714-14962-8</p>
		<p style="text-align: center;">MAC Mineralize Concealer in NC42 UPC NO. 7-73602-24043-2</p>
		<p style="text-align: center;">Origins Stay Tuned Balancing Foundation in 19 Fair UPC No. 7-17334-23966-1</p>
<p style="text-align: center;">Make-Up Art Cosmetics Inc. 767 Fifth Avenue New York, NY 10153</p>	n/a	<p style="text-align: center;">MAC Mineralize Concealer in NC42 UPC NO. 7-73602-24043-2</p>
<p style="text-align: center;">Nordstrom, Inc. 1617 Sixth Avenue Seattle WA 98101</p>	Sold by Estee Lauder Inc., Clinique Laboratories, LLC, or Make-Up Art Cosmetics Inc.	<p style="text-align: center;">Clinique Superbalanced Makeup in Cream Chamois 04 UPC No. 0-20714-14962-8</p>
		<p style="text-align: center;">MAC Mineralize Concealer in NC42 UPC NO. 7-73602-24043-2</p>

Names and Addresses of Responsible Parties	Further Limitation on Products Sold by Violators	Non-Exclusive Examples of the Products
Origins Natural Resources Inc. 7 Corporate Center Drive Melville, NY 11747	n/a	Origins Stay Tuned Balancing Foundation in 19 Fair UPC No. 7-17334-23966-1

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

I, Howard J. Hirsch, 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.

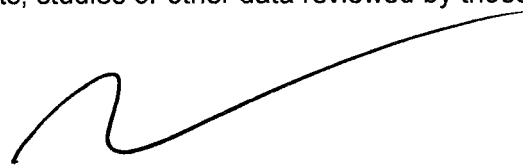
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

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.

April 23, 2019



Howard J. Hirsch
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Alexis Pearson, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of
5 California. I am over the age of eighteen (18) years and not a party to this action. My business
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is
7 apearson@lexlawgroup.com.

8 On April 23, 2019, I served the following document(s) on all interested parties in this
9 action by placing a true copy thereof in the manner and at the addresses indicated below:

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

12 **CERTIFICATE OF MERIT;** and

13 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986**
14 **(PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
15 asterisk).

16 **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail
17 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited
18 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
19 ordinary course of business. On this date, I placed sealed envelopes containing the above
20 mentioned documents for collection and mailing following my firm's ordinary business practices.

21 *Please see attached service list.*

22 **BY FACSIMILE:** I caused all pages of the document(s) listed above to be transmitted via
23 facsimile to the fax number(s) as indicated and said transmission was reported as complete and
24 without error.

25 **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
26 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
27 on the date executed.

28 Stacey Grassini, Deputy District Attorney
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29 Stockton, CA 95202
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34 Santa Barbara, CA 93101
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37 City Hall, Room 234
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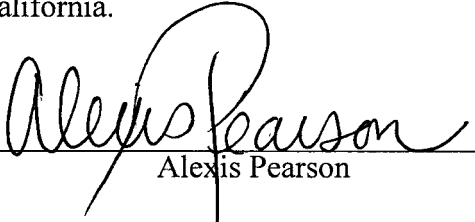
26 **BY PERSONAL DELIVERY:** I placed all pages of the document(s) listed above in a sealed
27 envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by
28 hand to the addressee(s) as indicated.

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BY OVERNIGHT DELIVERY: I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served.

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

Executed on April 23, 2019 at San Francisco, California.



Alexis Pearson

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Sonora, CA 95370

District Attorney of Yuba County
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Los Angeles, CA 90012

San Jose City Attorney's Office
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San Jose, CA 95113

California Attorney General's Office
Attention: Proposition 65 Coordinator and
Robert Thomas
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P.O. Box 70550
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