



Fair Oaks Law Building – 490 S. Fair Oaks Avenue • Pasadena, California 91105 • 866-203-2911 www.salpetergitkin.com

May 17, 2019

VIA US MAIL

Xavier Becerra, Attorney General
Office of the Attorney General
Attn: Health & Safety Code § 25249.7(d)(1) (Proposition 65) Notice
1300 "I" Street
Sacramento, California 95814-2919

Smoke Free USA, LLC
4705 S. Durango Dr., Suite 100-141
Las Vegas, NV 89147

Walmart Inc.
702 SW 8th St.
Bentonville, AR 72716

[District & City Attorneys Copied]

**Re: Notice Pursuant to Cal. Health & Safety Code §§ 25249.7(a) & (d)(1)
Violation or Threatened Violation of Proposition 65 Warning by Smoke Free USA, LLC
and Walmart Inc.**

Dear Mr. Becerra & to whomever else it may concern:

I represent California consumer John Devlin and write on his behalf, pursuant to California Health & Safety Code §§ 25249.7(a) & (d)(1), to notify you as to Smoke Free USA's and Walmart's violation, or threatened violation, of § 25249.6, *i.e.*, Proposition 65. The violations alleged by this Notice consist of types of harm that may potentially result from exposures to the toxic chemicals carbon monoxide and soots, tar and mineral oil, as a result of online sales made by Walmart to California citizens.

NATURE OF ALLEGED VIOLATION

Duration of the Violations

The violations have been occurring since at least May 4 2019, and are ongoing.

Jane Braugh | jane@salpetergitkin.com

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.

Listed Chemical(s)

The listed chemicals involved in these violations are carbon monoxide, known to the State of California to cause birth defects and other reproductive harm, and soots, tar and mineral oil, known to the State of California to cause cancer. The chemicals were listed as known hazardous substances in 1989 and 1987, respectively.

Type of Product and Route of Exposure

The type of product causing these violations is herbal cigarettes used for recreational smoking. The consumer is exposed to the Listed Chemicals through inhalation, while using the product for its intended purpose. Both chemicals are a byproduct of the combustion of the herbs contained in the cigarettes.

Description of Violation

Walmart is an online retailer selling herbal cigarettes to residents of California through its website (www.walmart.com). No clear and reasonable Proposition 65 warning is provided with these products, neither on the product pages nor at the point of sale, regarding the presence of the Listed Chemicals in the products. Smoke Free USA manufactures, distributes and sells herbal cigarettes.

RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, John Devlin intends to file a citizen enforcement lawsuit against Walmart and Smoke Free USA unless they agree in a binding written agreement 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 to eliminate unknowing exposures or reformulate such products to eliminate Listed Chemicals exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If Walmart and Smoke Free USA are interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact me directly on behalf of John Devlin. It should be noted that neither John Devlin nor I can: (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



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this Notice. Therefore, while reaching an agreement with John Devlin will resolve its claims, such agreement may not satisfy the public prosecutors.

Sincerely,

A handwritten signature in blue ink, appearing to be "JB", written over a horizontal line.

Jane Braugh

Attachment: Certificate of Merit (Cal. Health & Safety Code § 25249.7(d)(1))

cc: City and District Attorneys, as follows:



SALPETER GITKIN, LLP

 ATTORNEYS AT LAW

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<p>Stacey Grassini, Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org</p>	<p>Yen Dang, Deputy Assistant District Attorney Santa Clara County 70 West Hedding Street, West Wing San Jose, CA 95110 epu@da.sccgov.org</p>	<p>Nancy O'Malley, District Attorney, Alameda County 7776 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgov.org</p>
<p>Gary Lieberstein District Attorney Napa County 931 Parkway Mall Napa, CA 94559 CEPD@countyofnapa.org</p>	<p>Dije Ndreu, Deputy District Attorney, Monterey County 1200 Aguajito Road Monterey, CA 93901 Prop65DA@co.monterey.ca.us</p>	<p>Stephan R. Passalacqua District Attorney, Sonoma County 600 Administration Drive, Rm. 212J Sonoma, CA 95403 jbarnes@sonoma-county.org</p>
<p>Phillip J. Cline District Attorney, Tulare County 221 S. Mooney Avenue, Rm. 224 Visalia, CA 93291 Prop65@co.tulare.ca.us</p>	<p>Gregory D. Totten District Attorney, Ventura County 800 South Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org</p>	<p>Paul E. Zellerbach District Attorney, Riverside County 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org</p>
<p>Barbara Yook District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us</p>	<p>Thomas L. Hardy District Attorney, Inyo County 168 North Edwards Street Independence, CA 93526 inyoda@inyocounty.us</p>	<p>Michelle Latimer Program Coordinator, Lassen County 220 S. Lassen Street, Ste. 8 Susanville, CA 96130 mlatimer@co.lassen.ca.us</p>
<p>Anne Marie Schubert District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814 Prop65@sacda.org</p>	<p>Mark Ankcorn Deputy City Attorney 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov</p>	<p>Valerie Lopez Deputy City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102 Valerie.Lopez@sfcityatt.org</p>
<p>Gregory Alker Assistant District Attorney 732 Brannan Street San Francisco, CA 94103 gregory.alker@sfgov.org</p>	<p>Tori Verber Salazar, District Attorney 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org</p>	<p>Eric J. Dobroth Deputy District Attorney County Government Center Annex, 4th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us</p>
<p>Christopher Dalbey Deputy District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us</p>	<p>Jeffrey S. Rosell District Attorney 701 Ocean Street Santa Cruz, CA 95060 Prop65DA@santacruzcounty.us</p>	<p>Jeff W. Reisig District Attorney 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org</p>
<p>District Attorney of Stanislaus County 832 12th Street, Ste. 300 Modesto, CA 95354</p>	<p>District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301</p>	<p>District Attorney of Kings County 1400 West Lacey Blvd. Hanford, CA 93230</p>
<p>District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453</p>	<p>District Attorney of Butte County Administration Building 25 County Center Drive Oroville, CA 95965</p>	<p>District Attorney of Los Angeles County 210 W. Temple Street, Ste. 1800 Los Angeles, CA 90012</p>
<p>District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637</p>	<p>District Attorney of Marin County 3501 Civic Center Drive, Rm. 130 San Rafael, CA 94903</p>	<p>District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338</p>
<p>District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482</p>	<p>District Attorney of Merced County 2222 "M" Street Merced, CA 95340</p>	<p>District Attorney of Modoc County 204 S. Court Street, Rm. 202 Alturas, CA 96101-4020</p>


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District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93546	District Attorney of Nevada County 110 Union 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 Amador County 708 Court Street, Ste. 202 Jackson, CA 95642
District Attorney of San Benito County 419 Fourth Street, 2nd 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 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 San Mateo County 400 County Center, 3rd Fl. Redwood City, CA 94063	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 Shasta County 1355 West St. Redding, CA 96001	District Attorney of Sierra County Courthouse 100 Courthouse Sq., 2nd 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	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	San Jose City Attorney's Office 200 East Santa Clara Street San Jose, CA 95113
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	District Attorney of Colusa County 547 Market Street, Ste. 102 Colusa, CA 95932
District Attorney of Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531		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

May 17, 2019

CERTIFICATE OF MERIT PURSUANT TO CAL. HEALTH & SAFETY CODE § 25249.7(d)(1)

I, Jane Braugh, hereby declare:

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

2. I am an 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.

By: 
Jane Braugh
Attorney for John Devlin

[Attachments for Attorney General Only]

PROOF OF SERVICE

I, Christina Tanner, declare that I am over the age of 18 years, and am not a party to the within action. I am employed in the County of Broward, State of Florida, however, the law firm that employs me maintains an office in Pasadena, California and is licensed to do business in California. My California business address is Fair Oaks Law Building, 490 S. Fair Oaks Avenue, Pasadena, California 91105.

On May 17, 2019, I served the following documents:

- (1) 60 DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(d);
- (2) CERTIFICATE OF MERIT;
- (3) PROPOSITION 65: A SUMMARY (sent only to those on service list marked with an asterisk); and
- (4) CERTIFICATE OF MERIT ATTACHMENTS (served only on the Attorney General)

on the parties listed below by placing a true and correct copy thereof in a sealed envelope, addressed to each party and depositing it with the U.S. Postal Service for delivery by Certified Mail with the postage thereon fully prepaid:

Via U.S. Mail

Smoke Free USA, LLC
4705 S. Durango Dr., Suite 100-141
Las Vegas, NV 89147

Walmart, Inc.
702 SW 8th St.
Bentonville, AR 72716

On May 17, 2019, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website.

On May 17, 2019, I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized e-mail service.

On May 17, 2019, I served the following persons and/or entities at the last known address by placing a true and correct copy thereof in a sealed envelope and depositing it with the U.S. Postal Service for delivery with the postage thereon fully prepaid, and addressed as follows:

See Attached Service List

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

Executed on May 17, 2019, at Broward County, Florida.



Christina Tanner