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October 29, 2019 esmith@brodskysmith.com

| | |
|---|---|
| President/CEO<br>Neiman Marcus Group, Inc.<br>c/o The Corporation Trust Company<br>Corporation Trust center<br>1209 Orange Street<br>Wilmington, DE 19801 | Member/Manager<br>The Neiman Marcus Group, LLC<br>The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 |
| Member/Manager<br>Neiman Marcus Group, Ltd., LLC<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 | |

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Anthony Ferreiro ("Ferreiro"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Ferreiro has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual …" Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Ferreiro sixty (60) days after effective service of

this notice unless the public enforcement agencies[1] have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

Neiman Marcus Group, Inc
Neiman Marcus Group, Ltd., LLC
The Neiman Marcus Group, LLC

**Product Category/Type**: The type of product causing this violation is:

| *Product*[2] | *Retailer(s)* | *Manufacturer(s)/Distributor(s)* |
|---|---|---|
| Neiman Marcus Cooler – Interior Silver Lining<br>2013 0675<br>14137<br>2825644<br>401100724054<br>BLUPAT<br>Neiman Marcus Order# WN13319399296 | Neiman Marcus Group, Inc.<br>Neiman Marcus Group, Ltd., LLC<br>The Neiman Marcus Group, LLC | Unknown |

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Ferreiro served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin contact with the interior plastic when handled with bare hands. DEHP from the interior plastic can absorb to the surface of contents placed in the interior and these contents can subsequently be handled, held in direct contact with the skin, mouthed, or ingested. If the cooler is stored or transported in a carrier, DEHP that leaches from the product may contaminate other articles contained

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[1] The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

[2] The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product." Further, it is Ferreiro's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

within these closed spaces are subsequently handled, worn, mouthed, or consumed. Finally, while direct mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user's hand to mouth.

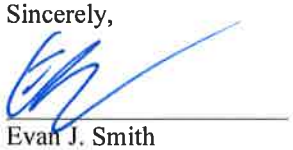
**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least April 22, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Ferreiro is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Ferreiro has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit
Certificate of Service
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On October 29, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, *et seq.*; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

| | |
|---|---|
| President/CEO<br>Neiman Marcus Group, Inc.<br>c/o The Corporation Trust Company<br>Corporation trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 | Member/Manager<br>The Neiman Marcus Group, LLC<br>The Corporation Trust Company<br>Corporation trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 |
| Member/Manager<br>Neiman Marcus Group, Ltd., LLC<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 | |

On October 29, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, *et seq.*; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on October 29, 2019, in Bala Cynwyd, Pennsylvania.

Evan J. Smith

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

I, Evan J. Smith, 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 & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the attorney for the noticing party, Anthony Ferreiro.

(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 chemicals that are the subject of the action.

(4) Based on the information obtained through these 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 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(s) 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 information identified in Health & 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.

Dated: October 29, 2019

Evan J. Smith
Attorney for Anthony Ferreiro

# SERVICE LIST

| | | | |
|---|---|---|---|
| The Honorable Nancy O'Malley<br>Alameda County District Attorney<br>1225 Fallon Street, Room 900<br>Oakland, CA 94612 | The Honorable Stacey Montgomery<br>Lassen County District Attorney<br>220 South Lassen Street, Ste. 8<br>Susanville, CA 96130 | The Honorable Candice Hooper<br>San Benito County District Attorney<br>419 4th Street, Second Floor<br>Hollister, CA 95203 | The Honorable Gregg Cohen<br>Tehama County District Attorney<br>444 Oak Street, Room L<br>Red Bluff, CA 96080 |
| The Honorable Terese Drabec<br>Alpine County District Attorney<br>270 Laramie Street, PO BOX 248<br>Markleeville, CA 96120 | The Honorable Jackie Lacey<br>Los Angeles County District Attorney<br>211 West Temple Street, Suite 1200<br>Los Angeles, CA 90012 | The Honorable Michael Ramos<br>San Bernardino County District Attorney<br>303 West 3rd Street, 6th Floor<br>San Bernardino, CA 92415-0502 | The Honorable Eric Heryford<br>Trinity County District Attorney<br>P.O. Box 310<br>Weaverville, CA 96093 |
| The Honorable Todd Riebe<br>Amador County District Attorney<br>708 Court Street<br>Jackson, CA 95642 | The Honorable David Linn<br>Madera County District Attorney<br>209 West Yosemite Avenue<br>Madera, CA 93637 | The Honorable Bonnie Dumanis<br>San Diego County District Attorney<br>330 W. Broadway Street<br>San Diego, CA 92101 | The Honorable Tim Ward<br>Tulare County District Attorney<br>221 South Mooney Boulevard, Rm 224<br>Visalia, CA 93291-4593 |
| The Honorable Michael Ramsey<br>Butte County District Attorney<br>25 County Center Drive<br>Oroville, CA 95965 | The Honorable Edward Berberian<br>Marin County District Attorney<br>3501 Civic Center Drive, Room 130<br>San Rafael, CA 94903 | The Honorable George Gascon<br>San Francisco County District Attorney<br>850 Bryant Street, Room 322<br>San Francisco, CA 94103 | The Honorable Laura Krieg<br>Tuolumne County District Attorney<br>423 North Washington Street<br>Sonora, CA 95370 |
| The Honorable Barbara Yook<br>Calaveras County District Attorney<br>891 Mountain Ranch Road<br>San Andreas, CA 95249 | The Honorable Thomas Cooke<br>Mariposa County District Attorney<br>5101 Jones Street, P.O. Box 730<br>Mariposa, CA 95338 | The Honorable Tori Verber Salazar<br>San Joaquin County District Attorney<br>222 East Weber Avenue, Room 202<br>Stockton, CA 95201 | The Honorable Gregory Totten<br>Ventura County District Attorney<br>800 South Victoria Avenue<br>Ventura, CA 93009 |
| The Honorable John Poyner<br>Colusa County District Attorney<br>346 Fifth Street<br>Colusa, CA 95932 | The Honorable C. David Eyster<br>Mendocino County District Attorney<br>100 North State Street, P.O. Box 1000<br>Ukiah, CA 95482 | The Honorable Dan Dow<br>San Luis Obispo County District Atty<br>1035 Palm Street, 4th Floor<br>San Luis Obispo, CA 93408 | The Honorable Jeff Reisig<br>Yolo County District Attorney<br>301 Second Street<br>Woodland, CA 95695 |
| The Honorable Mark Peterson<br>Contra Costa County District Attorney<br>900 Ward Street<br>Martinez, CA 94553 | The Honorable Larry Morse II<br>Merced County District Attorney<br>550 W. Main Street<br>Merced, CA 95340 | The Honorable Stephen Wagstaffe<br>San Mateo County District Attorney<br>400 County Center, Third Floor<br>Redwood City, CA 94063 | The Honorable Patrick McGrath<br>Yuba County District Attorney<br>215 Fifth Street<br>Marysville, CA 95901 |
| The Honorable Dale Trigg<br>Del Norte County District Attorney<br>450 H Street, Room 171<br>Crescent City, CA 95531 | The Honorable Jordan Funk<br>Modoc County District Attorney<br>204 S. Court Street, Suite 202<br>Alturas, CA 96101 | The Honorable Joyce Dudley<br>Santa Barbara County District Attorney<br>1112 Santa Barbara Street<br>Santa Barbara, CA 93101 | The Honorable Mike Feuer<br>Office of the City Attorney, Los Angeles<br>800 City Hall East<br>200 North Main Street<br>Los Angeles, CA 90012 |
| The Honorable Vern Pierson<br>El Dorado County District Attorney<br>778 Pacific Street<br>Placerville, CA 95667 | The Honorable Tim Kendall<br>Mono County District Attorney<br>P.O. Box 617<br>Bridgeport, CA 93517 | The Honorable Jeffrey Rosen<br>Santa Clara County District Attorney<br>70 West Hedding Street, West Wing<br>San Jose, CA 95110 | The Honorable James Sanchez<br>Office of the City Attorney, Sacramento<br>915 I Street, 4th Floor<br>Sacramento, CA 95814 |
| The Honorable Lisa Smittcamp<br>Fresno County District Attorney<br>2220 Tulare Street, #1000<br>Fresno, CA 93721 | The Honorable Dean Flippo<br>Monterey County District Attorney<br>P.O. Box 1131<br>Salinas, CA 93902 | The Honorable Jeff Rosell<br>Santa Cruz County District Attorney<br>701 Ocean Street, Room 200<br>Santa Cruz, CA 95060 | The Honorable Jan Goldsmith<br>Office of the City Attorney, San Diego<br>1200 Third Avenue, Suite 1620<br>San Diego, CA 92101 |
| The Honorable Dwayne Stewart<br>Glenn County District Attorney<br>P.O. Box 430<br>Willows, CA 95988 | The Honorable Allison Haley<br>Napa County District Attorney<br>1127 First Street, Suite C<br>Napa, CA 94559 | The Honorable Stephen Carlton<br>Shasta County District Attorney<br>1355 West Street<br>Redding, CA 96001 | The Honorable Dennis Herrera<br>Office of the City Attorney, San Francisco<br>1 Dr. Carlton B. Goodlett Place<br>San Francisco, CA 94102 |
| The Honorable Maggie Fleming<br>Humboldt County District Attorney<br>825 5th Street, Fourth Floor<br>Eureka, CA 95501 | The Honorable Clifford Newell<br>Nevada County District Attorney<br>201 Commercial Street<br>Nevada City, CA 95959 | The Honorable Lawrence Allen<br>Sierra County District Attorney<br>100 Courthouse Square<br>Downieville, CA 95936 | The Honorable Richard Doyle<br>Office of the City Attorney, San Jose<br>200 East Santa Clara Street,16th Floor<br>San Jose, CA 95113 |
| The Honorable Gilbert Otero<br>Imperial County District Attorney<br>940 West Main Street, Suite 102<br>El Centro, CA 92243 | The Honorable Tony Rackauckas<br>Orange County District Attorney<br>401 Civic Center Drive West<br>Santa Ana, CA 92701 | The Honorable James Kirk Andrus<br>Siskiyou County District Attorney<br>P.O. Box 986<br>Yreka, CA 96097 | Office of the California Attorney General<br>Proposition 65 Enforcement Reporting<br>ATTN: Prop 65 Coordinator<br>1515 Clay Street, Suite 2000<br>Oakland, CA 94612-0550 |
| The Honorable Thomas Hardy<br>Inyo County District Attorney<br>P.O. Drawer D<br>Independence, CA 93526 | The Honorable R. Scott Owens<br>Placer County District Attorney<br>10810 Justice Center Drive, Suite 240<br>Roseville, CA 95678 | The Honorable Krishna Abrams<br>Solano County District Attorney<br>675 Texas Street, Suite 4500<br>Fairfield, CA 94533 | |
| The Honorable Lisa Green<br>Kern County District Attorney<br>1215 Truxtun Avenue<br>Bakersfield, CA 93301 | The Honorable David Hollister<br>Plumas County District Attorney<br>520 Main Street, Room 404<br>Quincy, CA 95971 | The Honorable Jill Ravitch<br>Sonoma County District Attorney<br>600 Administration Drive, Room 212J<br>Santa Rosa, CA 95403 | |
| The Honorable Keith Fagundas<br>Kings County District Attorney<br>1400 West Lacey Boulevard<br>Hanford, CA 93230 | The Honorable Michael Hestrin<br>Riverside County District Attorney<br>3960 Orange Street<br>Riverside, CA 92501 | The Honorable Birgit Fladager<br>Stanislaus County District Attorney<br>832 12th Street, Suite 300<br>Modesto, CA 95354 | |
| The Honorable Donald Anderson<br>Lake County District Attorney<br>255 North Forbes Street<br>Lakeport CA 95453 | The Honorable Anne Marie Schubert<br>Sacramento County District Attorney<br>901 G Street<br>Sacramento CA 95814 | The Honorable Amanda Hopper<br>Sutter County District Attorney<br>463 Second Street, Suite 102<br>Yuba City CA 95991 | |

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

# THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: http://oehha.ca.gov/prop65/law/P65law72003.html. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.[1] These implementing regulations are available online at: http://oehha.ca.gov/prop65/law/P65Regs.html.

## *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

[1] All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: http://www.oehha.ca.gov/prop65/law/index.html.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

*DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (http://www.oehha.ca.gov/prop65/law/index.html) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant[2] it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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[2] See Section 25501(a)(4).

*HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to $2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;

- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;

- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: http://oehha.ca.gov/prop65/law/p65law72003.html.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

APPENDIX B

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): SPECIAL COMPLIANCE PROCEDURE

This Appendix B contains the notice of special compliance procedure and proof of compliance form prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). Under the Act, a private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. These exposures are:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of $500 (subject to change in 2019 and every five years thereafter) to the private party within 30 days; and

- Notified the private party serving the notice in writing that the violation has been corrected.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator.

When a private party sends a notice of alleged violation that alleges one or more of the exposures listed above, the notice must include a notice of special compliance procedure, and a proof of compliance form to be completed by the alleged violator as directed in the notice.

The notice and proof of compliance form is reproduced here:

Date: 
Name of Noticing Party or attorney for Noticing Party:
Address:
Phone number:

**SPECIAL COMPLIANCE PROCEDURE**
**PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

**(1) You have actually taken the corrective steps that you have certified in this form.**
**(2) The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
**(3) The Noticing Party receives the required $500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
**(4) This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

**PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

___Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

___A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

___Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

___Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

**IMPORTANT NOTES:**

(1) You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
(2) Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date:



Name of Noticing Party or attorney for Noticing Party:
Address:
Phone number:

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of $500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

[ ] Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
[ ] Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
[ ] Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

_____ _____

Signature of alleged violator or authorized representative Date

_____

Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.