

February 24, 2020

**SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) ("Proposition 65")**

Re: Violations of Proposition 65 concerning Dynasty Lychees, containing Lead.

Dear Alleged Violators and Public Enforcement Agencies:

Tamar Kaloustian ("Claimant"), serves this Notice of Violation ("Notice") on JFC International, Inc.; Gelson's Markets (collectively "Violators") pursuant to and in compliance with Proposition 65. KJT Law Group, LLP represents Tamar Kaloustian (Claimant). This Notice satisfies a prerequisite for Claimant to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. Claimant is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

Claimant is a citizen of the State of California, dedicated to protecting the consumer environment, improving human health, and supporting environmentally sound commercial practices. By sending this notice of violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§ 25249.5 *et seq.*, claimant is acting "in the public interest" pursuant to Proposition 65.

This Notice concerns violations of the warning prong of Proposition 65, which states 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 giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code § 25249.6.*

Pursuant to § 25249.7(d) of the statute, Claimant intends to bring an enforcement action against the Violators sixty (60) days after the effective service of this notice unless public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the Office of Environmental Hazard Assessment, the lead agency designated under the State, is enclosed with the copy of this notice served upon the violators ("Proposition 65: A Summary"). The specific details of the violations that are the subject of this notice are provided below.

**Consumer Product and Chemical(s) Involved**

Claimant has discovered that Dynasty Lychees, contains lead. Lead is known to the State of California to cause cancer. "Lead and lead compounds" have been listed as carcinogens since

October 1, 1992 and “lead” has been listed as a developmental toxicant for males and females since February 27, 1987. On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Identifiers for the Dynasty Lychees include but are not limited to: **“Dynasty Lychees – Peeled Whole – In Heavy Syrup”; UPC #: 011152042331.**

This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” Cal. Code Regs. 27 tit. § 25602(b).

### Description of Violation

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available Dynasty Lychees for distribution or sale in California to consumers. The packaging for Dynasty Lychees (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to Dynasty Lychees, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to Dynasty Lychees, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

### Route of Exposure

Use of the product identified above results in human exposure to lead. The primary route of lead exposure to consumers is through direct ingestion when consumers eat the **Dynasty Lychees**. These exposures take place throughout the State of California. No clear and reasonable warning is provided with regards to the carcinogenic and/or reproductive hazard of lead as required by State law.

### Duration of Violations

These violations have been occurring every day between since at least February 24, 2019, and every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided with regards to the carcinogenic and/or reproductive hazard of Lead as required by State law or until these known toxic chemicals are removed or reduced to allowable levels in the products.

### Counsel

The Claimant is represented in connection with this matter by and may only be contacted through:

**Vache Thomassian Esq.**  
**KJT Law Group, LLP**  
**230 N. Maryland Avenue, Suite 306, Glendale, CA 91206**  
**Telephone: (818) 507-8525**  
**Email: Vache@KJTLawGroup.com**

In keeping with the public interest goals of the statute and the objective of protecting individuals and the community at-large from further toxic exposures, KJT Law Group, LLP is interested in seeking a constructive and immediate resolution of this matter in order to avoid continuing unwarned exposure to listed chemicals.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, Claimant gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), Claimant may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). Claimant remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

All communications regarding this notice may be made to Vache Thomassian, Esq. at the above listed firm address and telephone number.

Regards,



Vache Thomassian, Esq.  
KJT Law Group, LLP

Attachments:

**Certificate of Merit**  
**Supporting Documentation for Certificate of Merit (to Attorney General Only)**  
**Proposition 65: A Summary**  
**Proof of Service (including DA Service List)**

**Dynasty Lychees, containing Lead  
CERTIFICATE OF MERIT  
Health & Safety Code § 25249.5 et. seq.**

I, Vache Thomassian, hereby declare:

- 1) This Certificate of Merit accompanies the attached sixty (60) 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 parties.
- 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 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.

Dated: February 24, 2019



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Vache Thomassian, Esq.  
KJT Law Group, LLP

## PROOF 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 action. I am employed in the County of Los Angeles, State of California; my business address is 230 N. Maryland Avenue, Suite 306, Glendale, CA 91206.

On **February 24, 2020** I served the following documents:

**60-DAY NOTICE OF VIOLATIONS; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by **Certified Mail**:

<b>Entity Address:</b> <b>JFC International, Inc.</b> 7101 E. Slauson Avenue Los Angeles, CA 90040	<b>Registered Agent for Service of Process:</b> <b>Yoshiyuki Ishigaki</b> <b>JFC International, Inc.</b> 7101 E. Slauson Avenue Los Angeles, CA 90040
<b>Entity Address:</b> <b>Gelson's Markets</b> 13833 Freeway Drive Santa Fe Springs, CA 90670	<b>Registered Agent for Service of Process:</b> <b>Mark Motsenbocker</b> <b>Gelson's Markets</b> 13833 Freeway Drive Santa Fe Springs, CA 90670

On **February 24, 2020** I served the following documents:

**60-DAY NOTICE OF VIOLATIONS; CERTIFICATE OF MERIT; SUPPORTING DOCUMENTATION FOR CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Ste. 2000  
Post Office Box 70550  
Oakland, California 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>

On **February 24, 2020** I served the following documents:

**60-DAY NOTICE OF VIOLATIONS; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

on each of the parties of the Service List attached hereto. I affected service by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the US Postal Service with the postage fully prepaid.

Executed under penalty of perjury pursuant to the laws of the State of California in Glendale, California on **February 24, 2020**.



Tro Krikorian

## **SERVICE LIST**

### **ALAMEDA COUNTY**

The Honorable Nancy O'Malley  
District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

### **ALPINE COUNTY**

The Honorable Michael Atwell  
District Attorney  
P.O. Box 248  
Markleeville, CA 96120

### **AMADOR COUNTY**

The Honorable Todd Riebe  
District Attorney  
708 Court Street, #202  
Jackson, CA 95642

### **BUTTE COUNTY**

The Honorable Michael Ramsey  
District Attorney  
25 County Center Drive —  
Administration Building  
Oroville, CA 95965

### **CALAVERAS COUNTY**

The Honorable Barbara Yook  
District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

### **COLUSA COUNTY**

The Honorable Matthew  
Beauchamp  
District Attorney  
346 5th Street, Suite 101  
Colusa, CA 95932

### **CONTRA COSTA COUNTY**

The Honorable Diana Becton  
District Attorney  
900 Ward Street  
Martinez, CA 94553

### **DEL NORTE COUNTY**

The Honorable Krishna A. Abrams  
District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531

### **EL DORADO COUNTY**

The Honorable Vernon Pierson  
District Attorney  
778 Pacific Street  
Placerville, CA 95667

### **FRESNO COUNTY**

The Honorable Lisa Smittcamp  
District Attorney  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

### **GLENN COUNTY**

The Honorable Dwayne Stewart  
District Attorney  
P.O. Box 430  
Willows, CA 95988

### **HUMBOLDT COUNTY**

The Honorable Maggie Fleming  
District Attorney  
825 5th Street  
Eureka, CA 95501

### **IMPERIAL COUNTY**

The Honorable Gilbert G. Otero  
District Attorney  
940 W. Main Street, Suite 102  
El Centro, CA 92243

### **INYO COUNTY**

The Honorable Thomas L. Hardy  
District Attorney  
168 N. Edwards  
Independence, CA 93526

### **KERN COUNTY**

The Honorable Cythia Zimmer  
District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

### **KINGS COUNTY**

The Honorable Keith Fagundes  
District Attorney  
1400 W. Lacey Boulevard  
Hanford, CA 93230

### **LAKE COUNTY**

The Honorable Susan Kronen  
District Attorney  
255 N. Forbes Street  
Lakeport, CA 95453

### **LASSEN COUNTY**

The Honorable Melyssah Rios  
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2950 Riverside Drive, Suite 102  
Susanville, CA 96130

### **LOS ANGELES COUNTY**

The Honorable Jackie Lacey  
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211 W. Temple Street, Suite 1200  
Los Angeles, CA 90012

### **MADERA COUNTY**

The Honorable Sally Moreno  
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209 W. Yosemite Avenue  
Madera, CA 93637

### **MARIN COUNTY**

The Honorable Lori Frugoli  
District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

### **MARIPOSA COUNTY**

The Honorable Walter Wall  
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P.O. Box 730  
Mariposa, CA 95338

### **MENDOCINO COUNTY**

The Honorable C. David Eyster  
District Attorney  
P.O. Box 1000  
Ukiah, CA 95482

### **MERCED COUNTY**

The Honorable Kimberly Lewis  
District Attorney  
550 W. Main Street  
Merced, CA 95340

## **SERVICE LIST**

### **MODOC COUNTY**

The Honorable Jordan Funk  
District Attorney  
204 S. Court Street, Room 202  
Alturas, CA 96101

### **MONO COUNTY**

The Honorable Samuel Kylo  
District Attorney  
P.O. Box 2053  
Mammoth Lakes, CA 93546

### **MONTEREY COUNTY**

The Honorable Jeannine Pacioni  
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P.O. Box 1131  
Salinas, CA 93902

### **NAPA COUNTY**

The Honorable Allison Haley  
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P.O. Box 720  
Napa, CA 94559

### **NEVADA COUNTY**

The Honorable Clifford Newell  
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201 Commercial Street  
Nevada City, CA 95959

### **ORANGE COUNTY**

The Honorable Todd Spitzer  
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401 Civic Center Drive West  
Santa Ana, CA 92701

### **PLACER COUNTY**

The Honorable R. Scott Owens  
District Attorney  
10810 Justice Center Drive  
Roseville, CA 95678

### **PLUMAS COUNTY**

The Honorable David Hollister  
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520 Main Street, Room 404  
Quincy, CA 95971

### **RIVERSIDE COUNTY**

The Honorable Michael Hestrin  
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3960 Orange Street  
Riverside, CA 92501

### **SACRAMENTO COUNTY**

The Honorable Anne Marie  
Schubert  
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901 G Street  
Sacramento, CA 95812

### **SAN BENITO COUNTY**

The Honorable Candice Hooper-  
Mancino  
District Attorney  
419 4th Street  
Hollister, CA 95023

### **SAN BERNARDINO COUNTY**

The Honorable Jason Anderson  
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303 W. Third Street  
San Bernardino, CA 92415

### **SAN DIEGO COUNTY**

The Honorable Summer Stephan  
District Attorney  
330 W. Broadway, Suite 1300  
San Diego, CA 92101

### **SAN FRANCISCO COUNTY**

The Honorable George Gascon  
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880 Bryant Street, Third Floor  
San Francisco, CA 94103

### **SAN JOAQUIN COUNTY**

The Honorable Tori Verber Salazar  
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P.O. Box 990  
Stockton, CA 95202

### **SAN LUIS OBISPO COUNTY**

The Honorable Dan Dow  
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Courthouse Annex, 4th Floor  
San Luis Obispo, CA 93408

### **SAN MATEO COUNTY**

The Honorable Stephen M.  
Wagstaffe  
District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

### **SANTA BARBARA COUNTY**

The Honorable Joyce Dudley  
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1112 Santa Barbara Street  
Santa Barbara, CA 93101

### **SANTA CLARA COUNTY**

The Honorable Jeffrey Rosen  
District Attorney  
70 W. Hedding Street, West Wing  
San Jose, CA 95110

### **SANTA CRUZ COUNTY**

The Honorable Jeff Rosell  
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701 Ocean Street, Room 200  
Santa Cruz, CA 95060

### **SHASTA COUNTY**

The Honorable Stephanie A.  
Bridgett  
District Attorney  
1355 West Street  
Redding, CA 96001

### **SIERRA COUNTY**

The Honorable Sandra Groven  
District Attorney  
100 Courthouse Square  
Downieville, CA 95936

### **SISKIYOU COUNTY**

The Honorable James Kirk Andrus  
District Attorney  
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Yreka, CA 96097

### **SOLANO COUNTY**

The Honorable Krishna A. Abrams  
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675 Texas Street, Suite 4500  
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## **SERVICE LIST**

### **SONOMA COUNTY**

The Honorable Jill Ravitch  
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600 Administration Drive, Room 212J  
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### **STANISLAUS COUNTY**

The Honorable Birgit Fladager  
District Attorney  
832 12th Street, Suite 300  
Modesto, CA 95353

### **SUTTER COUNTY**

The Honorable Amanda L. Hopper  
District Attorney  
446 Second Street, Suite 102  
Yuba City, CA 95991

### **TUOLUMNE COUNTY**

The Honorable Laura Krieg  
District Attorney  
423 No. Washington Street  
Sonora, CA 95370

### **VENTURA COUNTY**

The Honorable Gregory Totten  
District Attorney  
800 S. Victoria Avenue  
Ventura, CA 93009

### **YOLO COUNTY**

The Honorable Jeffery Reisig  
District Attorney  
301 Second Street  
Woodland, CA 95695

### **YUBA COUNTY**

The Honorable Clint Curry  
District Attorney  
215 Fifth Street, Suite 152  
Marysville, CA 95901

### **TEHAMA COUNTY**

The Honorable Matthew Rogers  
District Attorney  
P.O. Box 519  
Red Bluff, CA 96080

### **TRINITY COUNTY**

The Honorable Donna Daly  
District Attorney  
P.O. Box 310  
Weaverville, CA 96093

### **TULARE COUNTY**

The Honorable Tim Ward  
District Attorney  
221 S. Mooney Boulevard, Suite 224  
Visalia, CA 93291

### **CITY OF LOS ANGELES**

City Attorney's Office  
City Hall East,  
200 N. Main Street, Room 800  
Los Angeles, CA 90012

### **CITY OF SACRAMENTO**

Office of the City Attorney  
915 I Street, 4th Floor  
Sacramento, CA 95814

### **CITY OF SAN DIEGO**

City Attorney's Office  
1200 3rd Avenue, Suite 1620  
San Diego, CA 92101

### **CITY OF SAN FRANCISCO**

City Attorney's Office  
City Hall, Room 234  
1 Dr. Carlton B Goodlett Place  
San Francisco, CA 94102

### **CITY OF SAN JOSE**

City Attorney's Office  
200 E. Santa Clara Street, 16th Floor  
San Jose, CA 95113

### **CITY OF OAKLAND**

City Attorney's Office  
City Hall, 6th Floor  
1 Frank Ogawa Plaza  
Oakland, CA 94612



## 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. Please refer to the statute and OEHHA’s 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.<sup>1</sup> 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

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<sup>1</sup> 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](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 say 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 Periods.*** 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 full and part-time 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](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 a 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<sup>2</sup> 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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<sup>2</sup> 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, 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 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 or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and 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 as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

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 greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at:

<http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date:

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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 :

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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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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.