

60 DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: October 19, 2020

To: All Parties Listed On Attachment "A"

and

California Attorney General's Office;
District Attorney's Office for 58 counties;
City Attorney's for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;

From: Mrs. Evelyn Wimberley

I. My name is Evelyn Wimberley. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

Product Exposure:	See Section VII. Exhibit A
Listed Chemical:	Carbon Monoxide, Soot
Routes of Exposure:	Inhalation, Ingestion
Types of Harm:	Carcinogen, Causes Birth Defects and Other Reproductive Harm

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "Products." The sales of these products in California dating at least as far back as September 13, 2020 are subject to this notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemicals, resulting from use and contact with the products, California citizen lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces and everywhere else throughout California where these products are used. By way of example but not limitation, exposures occur when consumers use these products and inhale the combustion by-products associated with burning wood or other fuel. These violations occur during foreseeable use of the products and when the product is used as intended. These activities cause men, women, children, pregnant women, and women of child bearing age to be exposed directly to the listed chemicals from the products. People likely to be exposed are women, men, infants and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Mrs. Evelyn Wimberley
c/o Mr. Stephen Ure
Law Offices of Stephen Ure, PC.
11622 El Camino Real, Suite 100
San Diego, CA 92130
Tel: 619-235-5400

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future to eliminate the unknowing exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel 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 this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22 CAL. CODE REGS., §12903 (b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product**	Retailer(s)	Manufacturer(s)/Distributor(s)
UPC810011713147 Victorian Wood Burning Fire Bowl (Sunnydaze Décor Fire Bowl)	Target	Net Health Shops LLC Serenity Health & Home Decor
UPC690730608388 (Item#60838) Fire Bowl (29" Folding Fire Pit -Fire Sense)	Target	Well Travelled Living

UPC690730622377 (Item#62237)
Tokia Round Fire Pit (Wooden
Black Fire Pit -Fire sense)

Target

Well Travelled Living

UPC715117282408(Item#28240)
(Serial #50288200720)
Halo Fire Pit (Wood Burning Fire
Pit)

Target

Landmann

VII. EXHIBIT A

Product Category/Type
Outdoor/Grills/Firepits

Such As*

UPC810011713147
Victorian Wood Burning Fire
Bowl (Sunnydaze Décor Fire
Bowl)

Toxins

Carbon Monoxide, Soot

UPC690730608388
(Item#60838)
Fire Bowl (29" Folding Fire Pit –
Fire Sense)

Carbon Monoxide, Soot

UPC690730622377
(Item#62237)
Tokia Round Fire Pit (Wooden
Black Fire Pit -Fire sense)

Carbon Monoxide, Soot

UPC715117282408(Item#28240)
(Serial #50288200720)
Halo Fire Pit (Wood Burning
Fire Pit)

Carbon Monoxide, Soot

*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. 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 Category/Type" in Exhibit A. Further, it is this citizen'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 are provided to California citizens prior to purchase.

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/lewis.htm.

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 contaminant² 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.

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.


CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Stephen Ure, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the 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 this 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 plaintiff's 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 information identified in Health and 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.)

Dated: October 19, 2020



Stephen Ure

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is, 11622 El Camino Real, Suite 100, San Diego, CA 92130.

On 10/19/2020, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY
CODE §25249.7(d);
PROPOSITION 65: SUMMARY;
CERTIFICATE OF MERIT; AND
CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY
GENERAL)

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

Current President or CEO
Target Corporation
1000 Nicollet Mall
Minneapolis, MN 55403

Current President or CEO
Target.com
225 Transfer Drive
Indianapolis, IN 46214

Current President, Owner or CEO
Net Health Shops, LLC
5730 Venture Drive
Eau Claire, WI 54703

Current President, Owner, or CEO
Serenity Health and Home Decor
5730 Venture Drive
Eau Claire, WI 54703

Current President, Owner or CEO
Well Travelled Living
716 South 8th Street
Amelia Island, FL 32034

Current President, Owner or CEO
Landmann
7405 Graham Rd.
Fairburn, GA 30213

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

By Uploading onto http://oag.ca.gov/prop65/add-60-day-notice	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 33 California Counties and; The City Attorneys for Los Angeles and San Jose.
By sending electronic mail	The following Counties: Alameda, San Joaquin, San Luis Obispo, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco, Santa Barbara, San Diego, Santa Cruz, Contra Costa, Inyo, Mariposa, Merced, Nevada, Placer, Plumas and Calaveras The City Attorneys for San Diego and San Francisco

A list of address for each of the recipient's is attached.

Executed on 10/19/2020 San Diego, California



Stephen Ure

By US First Class Mail:

COLUSA COUNTY

547 Market Street, Ste. 102
Colusa, CA 95932

DEL NORTE COUNTY

450 H Street, Room 171
Crescent City, CA 95531

ALPINE COUNTY

PO Box 248
Markleeville, CA 96120

EL DORADO COUNTY

778 Pacific Street
Placerville, CA 95667

AMADOR COUNTY

708 Court Street #202
Jackson, CA 95642

FRESNO COUNTY

2220 Tulare Street, Ste. 1000
Fresno, CA 93721

OLENN COUNTY

PO Box 430
Willows, CA 95988

BUTTE COUNTY

25 County Center Drive --
Administration Building
Orono, CA 95965

HUMBOLDT COUNTY

825 5th Street
Eureka, CA 95501

MAJDERA COUNTY

209 West Yosemite Avenue
Madera, CA 93637

MARIN COUNTY

3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

MENDOCINO COUNTY

PO BOX 1000
Ukiah, CA 95482

MODOC COUNTY

204 S. Court Street, Room 202
Alturas, CA 96101

MONO COUNTY

PO BOX 617
Bridgeport, CA 93546

County of Los Angeles

210 West Temple Street,
Suite 18000
Los Angeles, CA 90012-3210

ORANGE COUNTY

401 Civic Center Drive West
Santa Ana, CA 92701

SAN BENITO COUNTY

419 4th Street
Hollister, CA 95023-3801

SAN MATEO COUNTY

400 County Center, Third Floor
Redwood City, CA 94063

SHASTA COUNTY

1755 West Street
Redding, CA 96001

SILVERA COUNTY

100 Courthouse Square
Downieville, CA 95936

SISKIYOU COUNTY

PO BOX 986
Yreka, CA 96097

SOLANO COUNTY

675 Texas Street, Ste. 4500
Fairfield, CA 94533

SAN BERNARDINO COUNTY

316 N. Mountain View Ave
San Bernardino, CA 92415-0004

KERN COUNTY

1215 Truxtun Avenue
Bakersfield, CA 93301

LAKE COUNTY

255 N. Forbes Street
Lakeport, CA 95453

IMPERIAL COUNTY

940 West Main Street, Ste. 102
El Centro, CA 92243

STANISLAUS COUNTY

832 12th Street, Ste. 300
Modesto, CA 95353

SUTTER COUNTY

446 2nd Street, Suite 102
Yuba City, CA 95991

TEHAMA COUNTY

PO BOX 519
Red Bluff, CA 96080

TRINITY COUNTY

PO BOX 310
Weaverville, CA 96093

TUOLUMNE COUNTY

423 No. Washington Street
Sonora, CA 95370

YUBA COUNTY

215 Fifth Street, Ste. 152
Marysville, CA 95901

Office of the City Attorney
CITY OF LOS ANGELES
200 N Main Street
Los Angeles, CA 90012

Office of the City Attorney
City of San Jose
200 East Santa Clara Street
16th Floor
San Jose, CA 95113

KINGS COUNTY

1400 West Lacey Blvd.
Hanford, CA 93230

By Electronic Mail:

ALAMEDA COUNTY

Attn: Nancy O'Malley
CEPDProp65@acgov.org

CALAVERAS COUNTY

Attn: Barbara Yook
Prop65Env@co.calaveras.ca.us

CONTRA COSTA COUNTY

Attn: Stacey Grassini
sgrassini@contracosta.ca.org

INYO COUNTY

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inyoda@inyocounty.us

SAN DIEGO COUNTY

Attn: Summer Stephau
SanDiegoDAProp65@sdcd.org

SAN DIEGO CITY ATTORNEY

Attn: Mark Ankeom
CityAtty.Prop65@sandiego.gov

SAN JOAQUIN COUNTY

Attn: Tom Verber
DAConsumerEnvironmental@sacda.org

LASSEN COUNTY

Attn: Michelle Latimer
mlatimer@co.lassen.ca.us

MARIPOSA COUNTY

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medar@mariposacounty.org

MONTEREY COUNTY

Attn: Jeannine M. Pacioni
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NAPA COUNTY

Attn: Gary Lieberstein
GLEPD@countyofnapa.org

SAN FRANCISCO COUNTY

Attn: Gregory Alker
Gregory.alker@sfgov.org

SAN FRANCISCO CITY

Attn: Valerie Lopez
Valerie.Lopez@sfcityatt.org

SAN LUIS OBISPO COUNTY

Attn: Eric J. Dobroth
edobroth@co.slo.ca.us

NEVADA COUNTY

Attn: Clifford H. Newell
DA_Prop65@co.nevada.ca.us

PLUMAS COUNTY

Attn: David Hollister
davidhollister@countyofplumas.com

RIVERSIDE COUNTY

Attn: Paul E. Zellerbach
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SACRAMENTO COUNTY

Attn: Anne Marie Schubert
Prop65@saocd.org

SANTA BARBARA COUNTY

Attn: Christopher Dalbey
DAProp65@co.santa-barbara.ca.us

SANTA CLARA COUNTY

Attn: Bud Porter
CPU@da.sccgov.org

SANTA CRUZ COUNTY

Attn: Jeffrey S. Rosell
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SONOMA COUNTY

Attn: Stephan R. Passalacqua
jharnes@sonoma-county.org

TULARE COUNTY

Attn: Phillip J. Cline
Prop65@co.tulare.ca.us

VENTURA COUNTY

Attn: Gregory D. Totten
daspecialops@vcnra.org

YOLO COUNTY

Attn: Jeff W. Reisig
clepd@yolocounty.org

PLACER COUNTY

Attn: Morgan Briggs Gire
prop65@placer.ca.gov

MERCED COUNTY

Attn: Kimberly Lewis
Prop65@merntofinanced.com