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January 11, 2021

esmith@brodskysmith.com

Member/Manager Ofra Cosmetics, LLC c/o Keith D. Silverstein, Esquire 1111 Brickell Avenue, Suite 1550 Miami, FL 33131	President/CEO Walmart, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
Member/Manager Walmart Apollo, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Member/Manager Wal-Mart.com USA, LLC c/o CT Corporation System 818 West Seventh Street, Suite 930 Los Angeles, CA 90017

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 Ema Bell (“Bell”), 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, Bell 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 Bell sixty (60) days after effective service of this

notice unless the public enforcement agencies<sup>1</sup> 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:

Ofra Cosmetics, LLC  
Walmart, Inc.  
Walmart Apollo, LLC  
Wal-Mart.com USA, LLC

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

<b><i>Product<sup>2</sup></i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Ofra exfoliating face and neck cream UPC# 693102041141 Lot# 011620 Exp. 07/2022	Walmart, Inc. Walmart Apollo, LLC Wal-Mart.com USA, LLC	Ofra Cosmetics, LLC

**Listed Chemicals:** This violation involves exposure to the chemical Diethanolamine (DEA). On June 22, 2012, the State of California listed DEA as a chemical known to the State to cause cancer. This addition took place more than twenty (20) months before Bell 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 (DEA) at levels that, upon reasonable use of the product, without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains a chemical known to the State of California to cause cancer.

**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 exposure. Dermal absorption of DEA can occur through direct skin contact with the product when applied to the user’s skin that includes the user’s face. Ingestion can occur if the product is applied to the user’s lips and mouth. Finally, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user’s hand to mouth, through hand to food to mouth contact, or through hand to cigarette to mouth contact.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least October 21, 2020; 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.

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<sup>1</sup> 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.

<sup>2</sup> 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 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 were and are provided to California citizens prior to purchase.

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, Bell is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Bell 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 805, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On January 11, 2021, 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:

Member/Manager Ofra Cosmetics, LLC c/o Keith D. Silverstein, Esquire 1111 Brickell Avenue, Suite 1550 Miami, FL 33131	President/CEO Walmart, Inc. c/o The Corporation Trust Company Corporation trust Center 1209 Orange Street Wilmington, DE 19801
Member/Manager Walmart Apollo, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Member/Manager Wal-Mart.com USA, LLC c/o CT Corporation System 818 West Seventh Street, Suite 930 Los Angeles, CA 90017

On January 11, 2021, 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 January 11, 2021, 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 Ema Bell.
- (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: January 11, 2021

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Ema Bell

# SERVICE LIST

The Honorable Nancy O'Malley Alameda County District Attorney 1225 Fallon Street, Room 900 Oakland, CA 94612	The Honorable Stacey Montgomery Lassen County District Attorney 220 South Lassen Street, Ste. 8 Susanville, CA 96130	The Honorable Candice Hooper San Benito County District Attorney 419 4th Street, Second Floor Hollister, CA 95203	The Honorable Gregg Cohen Tehama County District Attorney 444 Oak Street, Room L Red Bluff, CA 96080
The Honorable Terese Drabec Alpine County District Attorney 270 Laramie Street, PO BOX 248 Markleeville, CA 96120	The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	The Honorable Michael Ramos San Bernardino County District Attorney 303 West 3rd Street, 8th Floor San Bernardino, CA 92415-0502	The Honorable Eric Heryford Trinity County District Attorney P.O. Box 310 Weaverville, CA 96093
The Honorable Todd Riebe Amador County District Attorney 708 Court Street Jackson, CA 95642	The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	The Honorable Bonnie Dumanis San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101	The Honorable Tim Ward Tulare County District Attorney 221 South Mooney Boulevard, Rm 224 Visalia, CA 93291-4593
The Honorable Michael Ramsay Butte County District Attorney 25 County Center Drive Oroville, CA 95965	The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	The Honorable George Gascon San Francisco County District Attorney 850 Bryant Street, Room 322 San Francisco, CA 94103	The Honorable Laura Krieg Tuolumne County District Attorney 423 North Washington Street Sonora, CA 95370
The Honorable Barbara Yook Calaveras County District Attorney 991 Mountain Ranch Road San Andreas, CA 95249	The Honorable Thomas Cooke Mariposa County District Attorney 5101 Jones Street, P.O. Box 730 Mariposa, CA 95338	The Honorable Tori Verber Salazar San Joaquin County District Attorney 222 East Weber Avenue, Room 202 Stockton, CA 95201	The Honorable Gregory Totten Ventura County District Attorney 800 South Victoria Avenue Ventura, CA 93009
The Honorable John Poyner Colusa County District Attorney 346 Fifth Street Colusa, CA 95932	The Honorable C. David Eyster Mendocino County District Attorney 100 North State Street, P.O. Box 1000 Ukiah, CA 95482	The Honorable Dan Dow San Luis Obispo County District Atty 1035 Palm Street, 4th Floor San Luis Obispo, CA 93408	The Honorable Jeff Reisig Yolo County District Attorney 301 Second Street Woodland, CA 95695
The Honorable Mark Peterson Contra Costa County District Attorney 900 Ward Street Martinez, CA 94553	The Honorable Larry Morse II Merced County District Attorney 550 W. Main Street Merced, CA 95340	The Honorable Stephen Wagstaffe Santa Mateo County District Attorney 400 County Center, Third Floor Redwood City, CA 94063	The Honorable Patrick McGrath Yuba County District Attorney 215 Fifth Street Marysville, CA 95901
The Honorable Dale Trigg Del Norte County District Attorney 450 H Street, Room 171 Crescent City, CA 95531	The Honorable Jordan Funk Modoc County District Attorney 204 S. Court Street, Suite 202 Alturas, CA 96101	The Honorable Joyce Dudley Santa Barbara County District Attorney 1112 Santa Barbara Street Santa Barbara, CA 93101	The Honorable Mike Feuer Office of the City Attorney, Los Angeles 800 City Hall East 200 North Main Street Los Angeles, CA 90012
The Honorable Vern Pierson El Dorado County District Attorney 778 Pacific Street Placerville, CA 95667	The Honorable Tim Kendall Mono County District Attorney P.O. Box 617 Bridgeport, CA 93517	The Honorable Jeffrey Rosen Santa Clara County District Attorney 70 West Hedding Street, West Wing San Jose, CA 95110	The Honorable James Sanchez Office of the City Attorney, Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
The Honorable Lisa Smiltcamp Fresno County District Attorney 2220 Tulara Street, #1000 Fresno, CA 93721	The Honorable Dean Filipo Monterey County District Attorney P.O. Box 1131 Salinas, CA 93902	The Honorable Jeff Rosell Santa Cruz County District Attorney 701 Ocean Street, Room 200 Santa Cruz, CA 95060	The Honorable Jan Goldsmith Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1820 San Diego, CA 92101
The Honorable Dwayne Stewart Glenn County District Attorney P.O. Box 430 Willows, CA 95988	The Honorable Allison Haley Napa County District Attorney 1127 First Street, Suite C Napa, CA 94559	The Honorable Stephen Carlton Shasta County District Attorney 1355 West Street Redding, CA 96001	The Honorable Dennis Herrera Office of the City Attorney, San Francisco 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
The Honorable Maggie Fleming Humboldt County District Attorney 825 5th Street, Fourth Floor Eureka, CA 95501	The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959	The Honorable Lawrence Allen Sierra County District Attorney 100 Courthouse Square Downsville, CA 95936	The Honorable Richard Doyle Office of the City Attorney, San Jose 200 East Santa Clara Street, 18th Floor San Jose, CA 95113
The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243	The Honorable Tony Rackauckas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	The Honorable James Kirk Andrus Siskiyou County District Attorney P.O. Box 986 Yreka, CA 96097	Office of the California Attorney General Proposition 65 Enforcement Reporting ATTN: Prop 65 Coordinator 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550
The Honorable Thomas Hardy Inyo County District Attorney P.O. Drawer D Independence, CA 93526	The Honorable R. Scott Owens Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678	The Honorable Krishna Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533	
The Honorable Lisa Green Kern County District Attorney 1215 Truxtun Avenue Bakersfield, CA 93301	The Honorable David Hollister Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971	The Honorable Jill Ravitch Sonoma County District Attorney 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
The Honorable Keith Fagundas Kings County District Attorney 1400 West Lacey Boulevard Hanford, CA 93230	The Honorable Michael Hestrin Riverside County District Attorney 3960 Orange Street Riverside, CA 92501	The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th Street, Suite 300 Modesto, CA 95354	
The Honorable Donald Anderson Lake County District Attorney 255 North Forbes Street Lakeport CA 95453	The Honorable Anne Marie Schubert Sacramento County District Attorney 901 G Street Sacramento CA 95814	The Honorable Amanda Hopper Sutter County District Attorney 463 Second Street, Suite 102 Yuba City CA 95991	