

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Coconut Oil Diethanolamine Condensate (Cocamide DEA) in Antiseptic Skin Cleansers

July 2, 2021

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 508, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. Kaya Allan Sugerman is the Illegal Toxic Threats Program Director of and a responsible individual within CEH.

Description of Violation:

- Violators: The name and address of the violators are identified below:

Xttrium Laboratories, Inc.
1200 E. Business Center Drive
Mount Prospect, IL 60056

Walgreen Co.
108 Wilmot Road
Deerfield, IL 60015

- Time Period of Exposure: The violations have been occurring since at least July 2, 2018, are continuing to this day and will continue to occur as long as the products subject to this Notice of Violation are sold to and used by California consumers.
- Provision of Proposition 65: This Notice covers the "exposure provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is coconut oil diethanolamine condensate (cocamide DEA).
- Type of Product: The specific type of product causing these violations is

antiseptic skin cleansers. A non-exclusive example of this specific type of product is identified below:

Walgreens Dye-Free Antiseptic Foaming Skin Cleanser (SKU No. 11917 22151)

- Description of Exposure: This Notice addresses consumer exposures to cocamide DEA. Use of the product identified in this Notice results in human exposures to cocamide DEA. The product contains cocamide DEA as an intentionally added ingredient. The routes of exposure for the violations include dermal absorption and ingestion by consumers (including children). These exposures occur through the reasonably foreseeable use of the products when, for example, individuals apply the products to their skin. No clear and reasonable warning is provided with these products regarding the exposures to cocamide DEA caused by ordinary use of the products.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the cocamide DEA exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (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 CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Preservation of Relevant Evidence:

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of cocamide DEA in antiseptic skin cleansers; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of cocamide DEA in such products; and representative exemplars of each of the products sold by each alleged violator in the year preceding this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel, Howard Hirsch, at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, hhirsch@lexlawgroup.com.

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Howard Hirsch, hereby declare:

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

2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on 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 violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the 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 & 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.

July 2, 2021



Howard Hirsch
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

2

3 I, Owen Sutter, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of
5 California. I am over the age of eighteen (18) years and not a party to this action. My business
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is
osutter@lexlawgroup.com.

7 On July 2, 2021, I served the following document(s) on all interested parties in this action
8 by placing a true copy thereof in the manner and at the addresses indicated below:

9 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND
10 TOXIC ENFORCEMENT ACT;**

11 **CERTIFICATE OF MERIT;** and

12 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986**
13 **(PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
14 asterisk).

15 ☒ **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail
16 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited
17 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
18 ordinary course of business. On this date, I placed sealed envelopes containing the above
19 mentioned documents for collection and mailing following my firm's ordinary business practices.

20 *Please see attached service list.*

21 ☒ **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
22 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
23 on the date executed.

24 Stacey Grassini, Deputy District Attorney
25 Contra Costa County
26 900 Ward Street
27 Martinez, CA 94553
28 sgrassini@contracostada.org

Bud Porter
Supervising Deputy District Attorney
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70 West Hedding Street, West Wing
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Thomas L. Hardy, District Attorney
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Allison Haley, District Attorney
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Michelle Latimer, Program Coordinator
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Stephan R. Passalacqua, District Attorney
Sonoma County
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jbarnes@sonoma-county.org

1	Phillip J. Cline, District Attorney Tulare County 221 S. Mooney Avenue, Rm. 224 Visalia, CA 93291 Prop65@co.tulare.ca.us	Tori Verber Salazar, District Attorney San Joaquin County 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org
4	Paul E. Zellerbach, District Attorney Riverside County 4075 Main Street Riverside, CA 92501 Prop65@rivcoda.org	Christopher Dalbey, Deputy District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us
7	Jeff W. Reisig, District Attorney Yolo County 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org	Valery Lopez, Deputy City Attorney 1390 Market Street, 7 th Floor Valerie.lopez@sfcityatty.org San Francisco, CA 94102
10	Walter W. Hall, District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338 mcda@mariposacounty.org	Summer Stephan, District Attorney San Diego County 330 West Broadway San Diego, CA 92101 SanDiegoDAProp65@sdcca.org
13	Kimberly Lewis, District Attorney Merced County 550 West Main Street Merced, CA 95340 Prop65@countyofmerced.com	Mark Ankorn, Deputy City Attorney San Diego County 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov
16	Jeannine M. Pacioni, Deputy DA Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us	Gregory D. Totten, District Attorney Ventura County 800 South Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org
19	Clifford H. Newell, District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959 DA.prop65@co.nevada.ca.us	Athea M. Sargeant, Assistant DA 350 Rhode Island Street San Francisco, CA 94103 Athea.sargeant@sfgov.org
22	Morgan Briggs Gire, District Attorney Placer County Roseville, CA 95678 Prop65@placer.ca.gov	Anne Marie Schubert, District Attorney Sacramento Country 901 G Street Sacramento, CA 95814 Prop65@sacda.org
25	David Hollister, District Attorney Plumas County 520 Main Street Quincy, CA 95971 davidhollister@countyofplumas.com	Eric J. Dobroth, Deputy District Attorney San Luis Obispo County County Government Center Annex, 4th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us

1 Jeffrey S. Rosell, District Attorney
2 Santa Cruz County
3 701 Ocean Street
4 Santa Cruz, CA 95060
5 Prop65DA@santacruzcounty.us

Barbara Yook, District Attorney
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891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

4 Nancy O'Malley, District Attorney
5 Alameda County
6 7776 Oakport Street, Suite 650
7 Oakland, CA 94621
8 CEPDProp65@acgov.org

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

9 Executed on July 2, 2021 at San Francisco, California.

11 

12 Owen Sutter

SERVICE LIST

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Amador County
708 Court Street, Ste. 202
Jackson, CA 95642

District Attorney of Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

District Attorney of Colusa County
346 Fifth Street, Suite 101
Colusa, CA 95932

District Attorney of Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney of El Dorado County
778 Pacific Street
Placerville, CA 95667

District Attorney of Fresno County
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Fresno, CA 93721

District Attorney of Glenn County
P.O. Box 430
Willows, CA 95988

District Attorney of Humboldt County
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Eureka, CA 95501

District Attorney of Imperial County
939 Main Street, Ste. 102
El Centro, CA 92243

District Attorney of Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney of Kings County
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney of Los Angeles County
Hall of Justice
211 W. Temple Street, Ste. 1200
Los Angeles, CA 90012-3210

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209 West Yosemite Avenue
Madera, CA 93637

District Attorney of Marin County
3501 Civic Center Drive, Rm. 130
San Rafael, CA 94903

District Attorney of Mendocino County
P.O. Box 1000
Ukiah, CA 95482

District Attorney of Modoc County
204 S. Court Street, Rm. 202
Alturas, CA 96101-4020

District Attorney of Mono County
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District Attorney of Orange County
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Santa Ana, CA 92701

District Attorney of San Benito County
419 Fourth Street, 2nd Fl.
Hollister, CA 95023

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San Bernardino, CA 92415

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Redwood City, CA 94063

District Attorney of Shasta County
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District Attorney of Sierra County
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Downieville, CA 95936

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

District Attorney of Solano County
675 Texas Street, Ste. 4500
Fairfield, CA 94533

District Attorney of Stanislaus County
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Modesto, CA 95354

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Trinity County
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11 Court Street
Weaverville, CA 96093

District Attorney of Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

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

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

California Attorney General's Office
Attention: Proposition 65 Coordinator and
Robert Thomas
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550

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