

# 60-DAY NOTICE OF VIOLATION

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

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**DATE:** October 22, 2021

**TO:** Francis Dirksmeier, CEO - Performance Health Supply, Inc.;  
Current President - 4MD Medical Solutions LLC;  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Susan Davia

**RE:** Cervical Traction Sets with Vinyl Water Bag

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## I. INTRODUCTION

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My name is Susan Davia. 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 public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"). As noted above, notice is also being provided to the alleged violators Performance Health Supply, Inc. and 4MD Medical Solutions LLC (collectively "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposure, 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:    | Di(2-ethylhexyl)phthalate (DEHP)                  |
| Routes of Exposure: | Inhalation, Ingestion, Dermal                     |
| Types of Harm:      | Cancer, Birth Defects and other Reproductive Harm |

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## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific types of products that are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are 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 "products." The sales of these products in California dating at least as far back as October 2019, are subject to this Notice. As a result of the sales of these products, exposures to each identified listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure to the listed chemical resulting from contact with the products, California citizens 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.

### CONSUMER PRODUCT EXPOSURE

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the identified listed chemical(s). As the product naturally degrades through repeat manipulation and exposure to heat, airflow, light radiation, etc., the listed chemical diffuses to and collects on the surface of the product. Children, men and women (especially those of childbearing age) are exposed to the listed

chemical through direct dermal contact when they, among other activities, handle or touch the products during packing, unpacking and use or otherwise come into direct dermal contact during use of the products. Children, men and women (especially those of childbearing age) ingest the listed chemical when they transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. This hand-to-mouth activity may come directly from the hand or indirectly through hand contact with another item (such as a food item, cigarette or writing device) that is then ingested or placed in the mouth. Children, men and women (especially those of childbearing age) will also directly ingest the listed chemical anytime they place the soft vinyl components of the products directly in their mouths to hold or otherwise mouth the product. Children, men and women (especially those of childbearing age) will additionally suffer dermal absorption exposure to the product as a result of direct contact between the product and skin during product handling and use. Children, men and women (especially those of childbearing age) will also suffer inhalation exposure to the listed chemical as it evaporates from the product surface into the air/gas phase.

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### III. CONTACT INFORMATION

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

Susan Davia  
c/o Gregory Sheffer, Esq.  
Sheffer Law Firm  
232 E. Blithedale Avenue, Suite 210  
Mill Valley, CA 94941  
[gregs@sheffer-law.net](mailto:gregs@sheffer-law.net)

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### IV. PROPOSITION 65 INFORMATION

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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.

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### V. RESOLUTION OF NOTICED CLAIMS

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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 who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the listed chemical 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 resorting 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.

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**VI. ADDITIONAL NOTICE INFORMATION**

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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 examples within the categories or types 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 a catalog by the Violator and other retailers and distributors of the manufacturer.

| Product*   | Retailer       | Manufacturer/Distributor        |
|--|----------------|---------------------------------|
| Cervical Traction Sets with vinyl water bag and filler cap | 4mdmedical.com | Performance Health Supply, Inc. |

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**VII. EXHIBIT A**

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| Product Category/Type                                      | Such As*   | Toxins |
|--|--|--------|
| Cervical Traction Sets with vinyl water bag and filler cap | Sammons Preston Economy Overdoor Traction with Water Bag (551544, 01-00885914009567) | DEHP   |

\*The specifically identified example of the category or 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 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 were and are provided to California citizens prior to purchase.

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**VIII. DEMAND TO PRESERVE EVIDENCE**

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Please also accept this Notice as formal demand that the Violators preserve - in the same manner and form as created, prepared and as completed - all witness statements, diagrams, pictures, videotapes, sketches, reports, or other documentation regarding this claim or the facts, circumstances or other information surrounding this claim. Please preserve all documents relating to the products and exemplars that are identified herein and the subject of this Notice. Please preserve all electronic mail communications regarding or relating to the products, product testing and Proposition 65 compliance attempts and all electronically stored data that depicts, describes or otherwise relates to the subject Notice, the claims contained herein and related information. Please preserve all documents related to the products, packaging and design, including all correspondence relating to Proposition 65, phthalate content of the products and chemical warnings. Please preserve all documentation relating to the purchase and receipt of the Noticed products, as well as the further sale and delivery of the products, including all sales correspondence, purchase orders, shipping orders, invoices, vendor purchase agreements, etc. Please preserve all inventory control information and documentation relating to the

products and the amount of each product in your possession from your original receipt until your final sale, distribution or disposal. Please understand this demand is comprehensive and relates to all documentation and information regarding the products, Proposition 65 and phthalates. Please understand that these requests are intended to include, but not be limited to, all documents or other "writings" as that term is defined by Evidence Code Section 250. Please preserve a minimum of 5 examples of each style of each noticed product. Recipient may suffer adverse consequences if you choose to ignore this request to preserve evidence. Destruction of evidence *in anticipation of a discovery request* "would surely be a misuse of discovery within the meaning of Code of Civil Procedure section 2023" thereby exposing that party to a wide range of sanctions, including default and dismissal. (*Cedars Sinai Med. Ctr. v. Sup.Ct. (Bowyer)* (1998) 18 Cal.4<sup>th</sup> 1, 12.)

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**IX. DEMAND FOR RETAILER TO IDENTIFY MANUFACTURER, PRODUCER, PACKAGER, IMPORTER, SUPPLIER, AND DISTRIBUTOR**

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Pursuant to 27 C.C.R. 25600.2(g), "[t]he retail seller of a product that may cause a consumer product exposure shall promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product to ... [a]ny person who has served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an exposure that requires a warning under the Act." This notice includes both the description of the specific product type that is subject to this notice as well as one or more specific examples of the product in Section VII.

*Please accept this Notice as a formal demand for any non-manufacturing seller or distributor receiving this notice to promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product(s) so identified.* This information may and should be communicated on a letter from the retailer delivered via electronic mail to my counsel as indicated in Section III of this notice.

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Gregory M. Sheffer, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that 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 22, 2021

Sheffer Law Firm



Gregory M. Sheffer

## PROOF OF SERVICE

I am employed in the County of Marin, State of California. 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 232 E. Blithedale Ave., Suite 210, Mill Valley, CA 94941.

On the date indicated below, I served the following documents, described as:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**PROPOSITION 65: A SUMMARY (SERVED ONLY ON THE NOTICED VIOLATORS);**

**CERTIFICATE OF MERIT; AND**

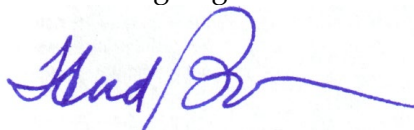
**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

(1) on each entity or other mandatory recipient listed below with a complete postal mailing address by placing a true and correct copy of the foregoing document(s) in a sealed envelope addressed to each interested party as set forth hereafter and depositing each such envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service or agent authorized to accept mail on behalf of the United States Postal Service and (2) on each entity or other mandatory recipient listed below with an electronic mail address by electronically mailing PDF copies of the foregoing documents to them at such designated electronic address (with delivery confirmation requested and without receiving any unresolved return message of failed delivery).

|   |  |  |
|---|--|--|
| Francis Dirksmeier, CEO<br>Performance Health Supply, Inc.<br>28100 Torch Parkway, Suite 700<br>Warrenville, IL 60555 | Francis Dirksmeier, CEO<br>Performance Health Supply, Inc.<br>W68 N158 Evergreen Blvd.<br>Cedarburg, WI 53012                  | Current President<br>4MD Medical Solutions LLC<br>15 America Avenue, Suite 207<br>Lakewood, NJ 08701 |
| The District Attorney for Each of the 58<br>counties in California<br>(see attached list of addresses)                | The City Attorney for Los Angeles, San<br>Diego, San Jose, San Francisco and<br>Sacramento<br>(see attached list of addresses) |  |

I also caused to be served the same documents on the Attorney General of the State of California by electronically uploading a copy to the California Attorney General's Website at <https://oag.ca.gov/prop65/add-60-day-notice>,

Executed this 22<sup>nd</sup> day of October 2021, at Mill Valley, California. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Heidi Boissonneau

## SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
[CEPDProp65@acgov.org](mailto:CEPDProp65@acgov.org)

The Honorable Michael Atwell  
Alpine County District Attorney  
PO BOX 248  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Barbara Yook  
Calaveras County District Attorney  
[Prop65Env@co.calaveras.ca.us](mailto:Prop65Env@co.calaveras.ca.us)

The Honorable Mathew Beauchamp  
Colusa County District Attorney  
310 Sixth Street  
Colusa, CA 95932

The Honorable Stacey Grassini, DDA  
Contra Costa County Dist. Attorney  
[sgrassini@contracosta.da.org](mailto:sgrassini@contracosta.da.org)

The Honorable Dale Trigg  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531

The Honorable Vern Pierson  
El Dorado County District Attorney  
778 Pacific Street  
Placerville, CA 95667

The Honorable Lisa Smittcamp  
Fresno County District Attorney  
2100 Tulare Street  
Fresno, CA 93721

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

The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 5th Street, Fourth Floor  
Eureka, CA 95501

The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Thomas Hardy  
Inyo County District Attorney  
[inyoda@inyocounty.us](mailto:inyoda@inyocounty.us)

The Honorable Cynthia Zimmer  
Kern County District Attorney  
1215 Truxtun Avenue, 4th Fl.  
Bakersfield, CA 93301

The Honorable Keith Fagundes  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Susan Kronen  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable Stacey Montgomery  
Lassen County District Attorney  
c/o Michelle Latimer

[mлатimer@co.lassen.ca.us](mailto:mлатimer@co.lassen.ca.us)

The Honorable George Gascon  
Los Angeles County Dist. Attorney  
211 West Temple Street, Suite 1200  
Los Angeles, CA 90012

The Honorable Sally Moreno  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

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

The Honorable Walter W. Wall  
Mariposa County District Attorney  
[mcdca@mariposacounty.org](mailto:mcdca@mariposacounty.org)

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

The Honorable Kimberly Lewis  
Merced County District Attorney  
[Prop65@countyofmerced.com](mailto:Prop65@countyofmerced.com)

The Honorable Cynthia Campbell  
Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101

The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 2053  
Mammoth Lakes, CA 93546

The Honorable Jeannine Paccioni  
Monterey County District Attorney  
c/o DiJe Andreu, Deputy DA  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

The Honorable Allison Haley  
Napa County District Attorney  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Clifford H. Newell, District Attorney  
Nevada County District Attorney  
[DA.Prop65@co.nevada.ca.us](mailto:DA.Prop65@co.nevada.ca.us)

The Honorable Todd Spitzer  
Orange County District Attorney  
300 North Flower Street  
Santa Ana, CA 92701

Morgan Briggs Gire  
Placer County District Attorney  
[prop65@placer.ca.gov](mailto:prop65@placer.ca.gov)

David Hollister, District Attorney  
Plumas County District Attorney  
[davidhollister@countyofplumas.com](mailto:davidhollister@countyofplumas.com)

The Honorable Paul E. Zellerbach  
Riverside County District Attorney  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

The Honorable Anne Marie Schubert  
Sacramento County District Attorney  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

The Honorable Candice Hooper  
San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95203

The Honorable Jason Anderson  
San Bernardino County Dist. Atty.  
303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502

Summer Stephan, District Attorney

San Diego County District Attorney  
[SanDiegoDAProp65@sdcca.org](mailto:SanDiegoDAProp65@sdcca.org)

Mark Ankcorn, Deputy City Atty  
San Diego  
[CityAttyProp65@sandiego.gov](mailto:CityAttyProp65@sandiego.gov)

Alethea M. Sargent ADA  
350 Rhode Island Street  
San Francisco, CA 94103  
[alethea.sargent@sfgov.org](mailto:alethea.sargent@sfgov.org)

Honorable Valerie Lopez, DCA  
San Francisco, CA 94102  
[Valerie.Lopez@sfcityatty.org](mailto:Valerie.Lopez@sfcityatty.org)

The Honorable Tori Verber Salazar  
San Joaquin County District Attorney  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Nora V. Frimann, City Atty  
200 E. Santa Clara Street, 216<sup>th</sup> Fl.  
San Jose, CA  
[proposition65notices@sanjoseca.gov](mailto:proposition65notices@sanjoseca.gov)

The Honorable Eric Dobroth  
San Luis Obispo County  
Deputy District Attorney  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

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

The Honorable Joyce Dudley  
Santa Barbara County Dist. Attorney  
c/o Christopher Dalby, DDA  
[DAProp65@co.santa-barbara.ca.us](mailto:DAProp65@co.santa-barbara.ca.us)

The Honorable Bud Porter  
Supervising Deputy District Attorney  
Santa Clara County  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

The Honorable Jeff Rosell  
Santa Cruz County District Attorney  
[Prop65DA@santacruzcounty.us](mailto:Prop65DA@santacruzcounty.us)

The Honorable Stephanie Bridgett  
Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

The Honorable Sandra Groven  
Sierra County District Attorney  
PO Box 457  
Downieville, CA 95936

The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097

The Honorable Kristina Abrams  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Stephan R. Passalacqua  
Sonoma County District Attorney  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

The Honorable Birgit Fladager  
Stanislaus County District Attorney  
832 12th Street, Suite 300  
Modesto, CA 95354

The Honorable Amanda Hopper  
Sutter County District Attorney  
463 Second Street, Suite 102  
Yuba City, CA 95991

The Honorable Matt Rogers  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

The Honorable David Brady  
Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093

The Honorable Phillip J. Cline  
Tulare County District Attorney  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

The Honorable Laura Krieg  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

The Honorable Gregory Totten  
Ventura County District Attorney  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

The Honorable Jeff Reising  
Yolo County District Attorney  
[cepd@yolocounty.org](mailto:cepd@yolocounty.org)

The Honorable Clint Curry  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

The Honorable Mike Feuer  
Office of the City Attorney, Los Angeles  
200 North Main Street, Suite 800  
Los Angeles, CA 90012

The Honorable Susan Wood  
Office of the City Attorney, Sacramento  
915 I Street, 4th Floor  
Sacramento, CA 95814

The Honorable Mara Elliott  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Dennis Herrera  
Office of the City Attorney, San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
Via Electronic filing  
<https://oag.ca.gov/prop65/add-60-day-notice>