

AMENDED RENEWED NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Perfluorooctanoic Acid in Cosmetics Products

November 11, 2021

This Amended Renewed Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). This Notice amends and supersedes the Renewed Notice of Violation previously issued on December 23, 2020 (Attorney General No. 2020-03499).

- 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 Sugerman is the Illegal Toxic Threats Program Director and a responsible individual within CEH.

Description of Violation:

- Violators: The names and addresses of the violators are:

The Estée Lauder Companies Inc.

767 Fifth Avenue
New York, NY 10153

Estée Lauder Inc.

7 Corporate Center Drive
Melville, NY 11747

Clinique Laboratories, LLC

767 Fifth Avenue
New York, NY 10153

Make-Up Art Cosmetics Inc.

767 Fifth Avenue
New York, NY 10153

Make-Up Art Cosmetics (U.S.), Inc.

767 Fifth Avenue
New York, NY 10153

- Time Period of Exposure: The violations have been occurring since at least November 10, 2018, and are continuing to this day.

- Provision of Proposition 65: This Notice covers the “exposure/warning 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 perfluorooctanoic acid (“PFOA”). Exposures to PFOA occur from the use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is cosmetics products. Non-exclusive examples of this specific type of product are: (1) Estée Lauder Bronze Goddess Powder Bronzer in 03 Medium Deep (UPC No. 0-27131-24050-1); (2) Clinique Superbalanced Makeup in Cream Chamois CN 40 (UPC No. 0-20714-14962-8); (3) MAC Mineralize Concealer in NC42 (UPC No. 7-73602-24043-2); and (4) Origins Stay Tuned Balancing Foundation in 19 Fair (UPC No. 7-17334-23966-1).
- Description of Exposure: This Notice addresses consumer exposures to PFOA. Use of the products identified in this Notice results in human exposures to PFOA. The routes of exposure for the violations are dermal absorption directly through the skin when consumers touch the products or apply them to the body, and ingestion via hand-to-mouth contact after consumers touch or handle the products. No clear and reasonable Proposition 65 warning is provided with these products regarding the presence of PFOA in 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 or otherwise provided to consumers; (2) provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future or reformulate such products to eliminate the PFOA 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 PFOA in the products; purchase, sales and usage 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 PFOA in such

products; and representative exemplars of any such products provided to customers or consumers by the alleged violator since November 10, 2018, through the date of any trial of the claims alleged in this Notice.

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

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

I, Joseph Mann, 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.

November 11, 2021



Joseph Mann
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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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 November 11, 2021, I served the following document(s) on all interested parties in this
8 action 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
Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110
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Thomas L. Hardy, District Attorney
168 North Edwards Street
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inyoda@inyocounty.us

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1 Phillip J. Cline, District Attorney
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2 221 S. Mooney Avenue, Rm. 224
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3 Prop65@co.tulare.ca.us

4 Paul E. Zellerbach, District Attorney
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6 Prop65@rivcoda.org

7 Jeff W. Reisig, District Attorney
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8 301 Second Street
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9 cfepd@yolocounty.org

10 Walter W. Hall, District Attorney
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12 mcda@mariposacounty.org

13 Kimberly Lewis, District Attorney
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14 550 West Main Street
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15 Prop65@countyofmerced.com

16 Jeannine M. Pacioni, Deputy DA
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17 1200 Aguajito Road
Monterey, CA 93940
18 Prop65DA@co.monterey.ca.us

19 Clifford H. Newell, District Attorney
Nevada County
20 201 Commercial Street
Nevada City, CA 95959
21 DA.prop65@co.nevada.ca.us

22 Morgan Briggs Gire, District Attorney
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23 Roseville, CA 95678
24 Prop65@placer.ca.gov

25 David Hollister, District Attorney
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26 520 Main Street
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27 davidhollister@countyofplumas.com

28

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

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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 November 11, 2021 at San Francisco, California.



Owen Sutter

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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
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Placerville, CA 95667

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Fresno, CA 93721

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Willows, CA 95988

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Eureka, CA 95501

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

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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

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

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Madera, CA 93637

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San Rafael, CA 94903

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Ukiah, CA 95482

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Alturas, CA 96101-4020

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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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Redding, CA 96001

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Downieville, CA 95936

District Attorney of Siskiyou County
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Yreka, CA 96097

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Fairfield, CA 94533

District Attorney of Stanislaus County
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Modesto, CA 95354

District Attorney of Sutter County
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Yuba City, CA 95991

District Attorney of Tehama County
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Red Bluff, CA 96080

District Attorney of Trinity County
P.O. Box 310
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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